

**ARCHIVES AS AGENTS OF ACCOUNTABILITY AND JUSTICE: AN EXAMINATION  
OF THE NATIONAL SECURITY ARCHIVE IN THE CONTEXT OF TRANSITIONAL  
JUSTICE IN LATIN AMERICA**

by

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Joel A. Blanco-Rivera, M.S.I.

This dissertation uses the National Security Archive as the unit of study to examine the roles and impact of archives in mechanisms of accountability for past human rights violations in Latin America. The National Security Archive, a research institution based at the George Washington University, collects declassified U.S. government documents related to foreign policy. The Archive's documentation and research about U.S. policy in Latin America during the Cold War has uncovered the planning and implementation of counterinsurgency operations by Latin American dictatorships and authoritarian regimes. It has also documented the U.S. government involvement and knowledge of these operations. These records have become vital to transitional justice mechanisms, particularly truth commissions and criminal prosecutions. The National Security Archive has been an active participant in these processes. This research examines the roles of the National Security Archive in mechanisms of past human rights abuses. Through case study research, it performs an analysis of documents, including court decisions, news, and resources from NSA. Semi-structured interviews were also performed. Particular attention is given to the Archive's work in Guatemala.

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## **PREFACE**

This dissertation topic emerged from my research during my coursework at the University of Pittsburgh's School of Information Sciences. More specifically, my research paper about archives, collective memory and the Chilean Truth and Reconciliation Commission, written for Richard J. Cox's course Archival Access, Advocacy, and Ethics, exposed me to the topic of transitional justice. The study of the roles of archives in mechanisms of transitional justice has fascinated me since then. I thank Prof. Cox for his great support during my coursework and my research, and for recommending the idea of looking at the National Security Archive as a possible topic for my dissertation. I'm also very grateful for our conversations about baseball. They helped me deal with the pressures of being a doctoral student.

Prof. David A. Wallace has influenced my passion for archival issues related to the right to know, government accountability and justice. I am very grateful for his assistance as my faculty advisor at the University of Michigan and his tremendously helpful feedback of my dissertation proposal. I am honored to have him as my external member of the dissertation committee. Thanks to Professors James "Kip" Curier, Ellen Detlefsen, and Bernadette Callery. I greatly appreciate Professor Curier's help through the IRB process and for sharing his experience doing research. Professor Detlefsen's feedback regarding research methods was also very helpful. I am also honored to have Professor Callery as a member of my committee. In addition to her support to my dissertation research, Prof. Callery was a great teaching mentor during my years at Pitt. I learned a lot working as a Teaching Assistant for Prof. Callery, and that experience has influenced my teaching philosophy and practice.

I am also very grateful for the assistance by staff of the National Security Archive. It was through my initial email to the Archive's director Tom Blanton that I learned about the Carranza case in Memphis. I am also tremendously grateful to Jesse Franzblau. Our initial communications helped me design my research with a focus on legal cases and the study of court decisions. Thanks also to Tamara Feinstein, for her great insight about the Archive's work in Peru, and to Emily Willard, research assistant at the NSA, who was very helpful during my visit at the NSA. Finally, thanks to Kate Doyle. Her testimony of work in Latin America is remarkable, and her interview was key to this dissertation research.

A very special thanks goes to the staff of the Archives of the Guatemalan National Police and its director Gustavo Meoño. The work of this group of archivists is definitely inspiring. I also thank Prof. Roxanna Altholz for her time and her insight on the *Diario Militar* case. Thanks also to David Esquivel, from Bass Berry and Sims and lead attorney of the plaintiffs in the Carranza lawsuit, for his assistance during my research about this case.

During my years as a doctoral student I was very fortunate to be part of an excellent cohort of doctoral students. Our meetings and informal conversations about research were very valuable. Thanks to Janet Ceja, Brian Cumer, Heather Soyka, Nora Mattern, Tonia Sutherland, and Lindsey Mattock. I'm also very grateful for the help of Bob Ritter, including his feedback to my draft of the dissertation. I also thank my dear friend Prof. Irmay Reyes-Santos for reading my draft and providing very helpful comments.

A very special note of gratitude to my partner Monica Jacobo-Suarez, to whom I will always be grateful for her unconditional support during my dissertation research and writing. I am very fortunate of sharing my life with you. *Te amo*.

This dissertation is dedicated to my parents, Tony Blanco and Irma Rivera, and my sisters Irmarié and Fátima. My parents raised me with the values that have shaped my vision of justice and humanism. *Papi y mami, este logro es de ustedes.*

## 1.0 PROBLEM STATEMENT

This dissertation uses the work of the National Security Archive in Latin America as the unit of study to examine the impact of records in mechanisms of accountability for past human rights abuses. It applies methods of historical analysis and semi-structured interviews to analyze the following question: what roles have the National Security Archive played in mechanisms of accountability for past human rights violations in Latin America?

One of the main contributions of this study is that it places the study of archives and human rights in the context of transitional justice, a field of study that emerged in the 1980s as a consequence of what Samuel Huntington calls "the third wave of democratization."<sup>1</sup> Preservation and access to archives of repression, archives of truth commissions, and archives of human rights groups, among others, are imperative for the continuing efforts to achieve legal and historical accountability. This dissertation underscores this imperative. But perhaps more important, it shows how archives and archivists become directly involved in political struggles, in the work of human rights groups and other non-governmental organizations, and the continuing debates about memory and forgetting.

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<sup>1</sup> Samuel P. Huntington, *The Third Wave: Democratization in the Late Twentieth Century* (Norman: University of Oklahoma Press, 1991).

## 1.1 SIGNIFICANCE OF STUDY

Why select the work of the National Security Archive in Latin America as the unit of study for this dissertation? First and foremost, the work of this organization provides an excellent case to explore the complexities surrounding records and recordkeeping during the struggles against impunity for human rights violations. The Archive's cooperation with groups seeking accountability for past abuses in Latin America, its assistance to the organization of discovered archives of repression and with criminal cases offer a rich amount of data to analyze how archives affect accountability mechanisms. A general look at its experience with Latin American cases offers a clear picture of this.

In Latin America, the National Security Archive has been actively involved with the ongoing struggle for accountability from the traumatic legacy of authoritarianism and civil wars that affected most of the region from the 1960s to the mid 1990s.<sup>2</sup> Transitions from these regimes raised the difficult question of how to address past human rights abuses, a question that is examined through the field of transitional justice. Mechanisms such as truth commissions, trials and symbolic retributions were implemented. During a lecture at the University of Oregon, NSA senior analyst Peter Kornbluh stated that the Archive has collaborated with all the truth commissions established in Latin America since Chile's National Commission on Truth and Reconciliation in 1990.<sup>3</sup> In Guatemala, the *Comisión para el Esclarecimiento Histórico* (Guatemalan Commission for Historical Clarification), the truth commission in charge of

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<sup>2</sup> According to Brian Loveman, by 1979 more than two thirds of the countries in the region were under military rule. See Brian Loveman, "'Protected Democracies' and Military Guardianship: Political Transitions in Latin America, 1978-1993," *Journal of Interamerican Studies and World Affairs* 36, no. 2 (Summer 1994): 105.

<sup>3</sup> Peter Kornbluh, "Information is Power: Access to Archives and Human Rights in Latin America," lecture at the University of Oregon, May 5, 2010. Available online at <http://media.uoregon.edu/channel/?p=1438> (Accessed August 21, 2010)

investigating human rights abuses during the 36-year civil war, received the help of the NSA to seek the declassification of U.S. government records documenting its role in Guatemala. In 1994, the Archive started to file FOIA requests about Guatemala, leading to the declassification and release of more than 100,000 pages. Subsequently, staff at the Archive developed a database to track significant Guatemalan military officers and units. This database helped the Commission to identify those involved in particular massacres and assassinations.<sup>4</sup> The Archive assisted Guatemalan archivists to organize the archives of the National Police, discovered in 2005, and it has been actively involved with the groups who filed a criminal complaint in Spain's National Court against eight former Guatemalan officers accused of genocide.<sup>5</sup>

The organization also provided technological assistance to the *Centro de Documentación y Archivo para la Defensa de los Derechos Humanos* (Documentation Center and Archive for the Defense of Human Rights), a division of the Justice Department in Paraguay, which is the custodian of the Archive of Terror.<sup>6</sup> On 8 September 2008, National Security Archive Senior Analyst Kate Doyle testified before Perú's Special Tribunal during the trial against former president Alberto Fujimori, where she offered her analysis of twenty-one declassified U.S. records related to human rights abuses during the Fujimori administration.<sup>7</sup> Doyle is also very active with accountability and transparency issues in Mexico, Guatemala and El Salvador. She is currently assisting the Center for Justice and Accountability and the Spanish Pro-Human Rights

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<sup>4</sup> Thomas S. Blanton, "Recovering the Memory of the Cold War: Forensic History and Latin America," in *In from the Cold: Latin America's New Encounter with the Cold War*, ed. Gilbert M. Joseph and Daniela Spencer (Durham: Duke University Press, 2008), 53-54.

<sup>5</sup> See <http://www.gwu.edu/~nsarchiv/guatemala/index.htm> (Accessed April 30 2010).

<sup>6</sup> Paraguay. Corte Suprema de Justicia. Centro de Documentación y Archivo para la Defensa de los Derechos Humanos. <http://www.pj.gov.py/cdya/> (Accessed 23 October 2008). The National Security Archive also provides information about the Archive of Terror, including digitized documents, at <http://www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB239d/index.htm> (Accessed April 30 2010).

<sup>7</sup> "Archive Expert Testifies in Fujimori Trial," National Security Archive Electronic Briefing Book No. 256, September 9, 2008. <http://www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB256/index.htm> (Accessed 23 October 2008).

Association in their filing of a criminal case at the Spanish National Court to prosecute those responsible for the killings of six Jesuit priests and two women in San Salvador on 16 November 1989.<sup>8</sup>

This overview of some of the significant contributions from the NSA leads to the second argument to justify the relevance of this dissertation. It is unfortunate that research about the National Security Archive is non-existent in the archival literature. A search on databases that index archives publications returned zero results of any publication from a top-tier journal focusing on the work of the National Security Archive.<sup>9</sup> A number of essays from the *American Archivist* mention the NSA very briefly, including Timothy Ericson's SAA presidential address in 2004.<sup>10</sup> The most direct reference to the importance of the organization comes from Richard J. Cox in his essay "Secrecy, Archives, and the Archivist: A Review Essay (Sort Of)" (2009), where he states that in order to assure government accountability "we need a stronger National Archives and to work as closely with the National Security Archive as possible."<sup>11</sup> Cox also comments about the NSA in his book *Ethics, Accountability, and Recordkeeping in a Dangerous World*, pointing to Priscilla Hayner's study of truth commissions. As Cox explains, Hayner underscores the contribution of the NSA instead of the National Archives and Records Administration. "That a group has had become a watchdog of its national archives as well as its

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<sup>8</sup> See Kate Doyle, "The Right to Information is the Right to Justice: Declassified Documents and the Assassination of the Jesuits in El Salvador," UNREDACTED: The National Security Archive, Unedited and Uncensored, 16 November 2009, <http://nsarchive.wordpress.com/2009/11/16/right-to-justice-in-el-salvador/> (Accessed December 2, 2009)

<sup>9</sup> The databases searched were *Library and Information Science Abstracts* and *Library, Information Science & Technology Abstracts* and *Library Literature & Information Science*. I also searched the database for the *American Archivist*, *Archival Science* and *Archivaria*, which along with *Archives & Manuscripts* are regarded as the top-tier journals from the archival profession.

<sup>10</sup> Timothy Ericson, "Building Our Own 'Iron Curtain': The Emergence of Secrecy in American Government," *American Archivist* 68, no. 1 (Spring/Summer 2005): 18-52.

<sup>11</sup> Richard J. Cox, "Secrecy, Archives, and the Archivist: A Review Essay (Sort Of)," *American Archivist* 72 (Spring/Summer 2009): 231.



government suggest the need for rethinking the archival mission and the adoption of action, rather than rhetoric, to promote the importance of archives,” Cox concludes.<sup>12</sup> My review of the relevant archival literature about accountability found no analysis of the National Security Archive. Regarding dissertations from doctoral students in archival studies, David A. Wallace’s research is the closest to an analysis of the NSA. Yet, Wallace’s focus is on how the PROFS case shows the importance of mechanisms for access to federal records. The Archive was an important player in the lawsuit.

This exploratory study of the National Security Archive in Latin America offers the prospect of expanding the analysis of the relationship between archives and accountability. The scholarship about this topic leaves no doubt about the importance of archives and records to mechanisms of accountability. Richard Cox and David Wallace provide a good overview of accountability and the power of records in the introduction to the collection of essays *Archives and the Public Good*. And while the fourteen cases presented in the book by a number of authors provide an excellent picture of how records are important for accountability, it is a starting point that should contribute to further research. Cox and Wallace recognize this when they state, “Accountability as an idea suggesting the importance of records, needs to be explored in greater detail so that all its ramifications are understood, and we hope that this volume is a start to doing this,”<sup>13</sup> a statement reinforced by Cox in *Ethics, Accountability, and Recordkeeping in a Dangerous World*.<sup>14</sup>

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<sup>12</sup> Richard J. Cox, *Ethics, Accountability, and Recordkeeping in a Dangerous World* (London: Facet Publishing, 2006), xl.

<sup>13</sup> Richard J. Cox and David A. Wallace, ed., *Archives and the Public Good: Accountability and Records in Modern Society* (Westport, Conn.: Quorum Books, 2002), 3.

<sup>14</sup> Cox, *Ethics, Accountability, and Recordkeeping in a Dangerous World*, xlv.

This dissertation also places the National Security Archive within the context of the theories of accountability developed by the field of political science. Particularly, this study draws from the work of Andreas Schedler and the concepts of ‘vertical accountability,’ introduced by Guillermo O’Donnell, and ‘social accountability,’ discussed by Enrique Peruzzotti and Catalina Smulovitz. Schedler places accountability into a framework composed by three dimensions: monitoring, justification and enforcement. The concepts of vertical and social accountability situate civil society and non-governmental organizations (NGOs) as important actors in the process of holding governments accountable for their actions. Groups seeking accountability for past human rights violations are one of the more important examples. Strong networking and collaboration among NGOs have been one of the foremost causes of the achievements to hold accountable perpetrators of human rights violations in the courts. The National Security Archive is part of this network.

Finally, by focusing on the contributions of the NSA on Latin American issues, this dissertation addresses the need for more scholarly work, by archivists, about archives and human rights in the region. Latin America has historically been part of the struggles for human rights, going back to the elaboration of the Universal Declaration of Human Rights.<sup>15</sup> The region experienced a traumatic period of repression, and social movements and communities played important roles in the fight against repression and impunity. Archivists have been active in these processes, with organizations like Archivists without Borders and initiatives such as *Memoria Abierta* in Argentina, the *Museo de la Memoria* in Chile and the archive *Memorias Reveladas* in

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<sup>15</sup> Latin Americans presented important ideas during the elaboration of the Universal Declaration eventually included in the document. See Paolo G. Carroza, “From Conquest to Constitutions: Retrieving a Latin American Tradition of the Idea of Human Rights,” *Human Rights Quarterly* 25, no. 2 (2003): 281-313., and Kathryn A. Sikkink, *Mixed Signals: U.S. Human Rights Policy and Latin America* (Ithaca: Cornell University Press, 2004), 23–39.

Brazil. Moreover, archivists have become more active in the discussion of the relation between archives and human rights.<sup>16</sup> Therefore it is imperative that these and other initiatives are further incorporated into archival scholarship. This dissertation is a contribution to this scholarship and, in a personal note, will provide the initial steps to develop my long-term research agenda.

## **1.2 RESEARCH QUESTION**

This dissertation uses the National Security Archive as the unit of study to examine the relation between archives and accountability for past human rights abuses. This study is placed in the context of transitional justice in Latin America. The following question will be examined:

1. What roles have the National Security Archive played in mechanisms of accountability for past human rights violations in Latin America?

## **1.3 THE NATIONAL SECURITY ARCHIVE**

The origins of the National Security Archive can be traced back to 1984 with the Central American Project, an effort by journalist Raymond Bonner and then House Representative Jim Woody to gather declassified U.S. government records about its foreign policy in Central

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<sup>16</sup> For example, in October 2007 the Center for Human Rights Documentation & Research at Columbia University hosted the conference “Human Rights Archives and Documentation: Meeting the Needs of Research, Teaching, Advocacy and Social Justice” (see [http://www.columbia.edu/cu/lweb/indiv/humanrights/news\\_events/2007/conference/index.html](http://www.columbia.edu/cu/lweb/indiv/humanrights/news_events/2007/conference/index.html)). In May 2011 the theme of conference of the Seminar on the Acquisition of Latin American Library Materials (SALALM) will be “Preserving Memory: Documenting and Archiving Latin American Human Rights.” Additionally, in 2010 the Society of American Archivists Human Rights Archives Roundtable was established.

America.<sup>17</sup> Looking to move beyond the Central American Project, Scott Armstrong, a former *Washington Post* reporter, officially founded the National Security Archive in 1985. The creation of the Archive came in a moment when access to government information was becoming more difficult. In an interview for the *Government Publications Review*, Armstrong declared that the founders of the Archive “saw the journalistic, scholarly, and public interest communities, and even the Congress, less and less able to cope with such executive manipulations of information.” They envisioned the National Security Archive as an organization that would fight the government strategy of prolonging the release of information. Stating that “[n]ot only was there no accountability since there was no information widely available, but there was not even accountability on the issue of accountability.” Armstrong further explained,

Probably the most important reason for founding the Archive was to provide an organization that would not only keep requests active but also retain released material in the public domain. In the past, if one person did get something released and that information was cited in a publication or informally disseminated, any other individual who wanted to examine the original evidence would have to begin the access process all over again.<sup>18</sup>

The retention and dissemination of these records, thousands of them currently available in digital format, has considerably contributed to research about U.S. foreign policy,<sup>19</sup> accessibility,<sup>20</sup> and for education purposes.<sup>21</sup>

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<sup>17</sup> Ron Chepesiuk, “National Security Archive Champions Freedom of Information: FOIA Feeds a Vast Library of Declassified Documents,” *American Libraries* 23 (April 2002): 81.

<sup>18</sup> Bruce Morton and Steven D. Zink, “Preserving the Institutional Memory, An Interview with Scott Armstrong, Executive Director of the National Security Archive; 1755, Massachusetts Avenue, NW, Washington, SC 20036, USA,” *Government Publications Review* 16, no. 4 (1989): 333.

<sup>19</sup> NSA staff and fellows have published a total of 27 books, many of them about topics related to the Cold War. For a list of the publications see <http://www.gwu.edu/~nsarchiv/nsa/publications/staff/staffpub.html> (Accessed December 3, 2009).

<sup>20</sup> Juan E. Méndez, President Emeritus of the International Center for Transitional Justice, underscored the work of the NSA in initiatives against impunity in Latin America during his 2007 keynote presentation at the conference “Human Rights Archives and Documentation: Meeting the Needs of Research, Teaching, Advocacy and Social Justice” at Columbia University’s Center for Human Rights Documentation & Research. Video recordings of the complete conference are available at

The National Security Archive has been actively involved in court cases against the executive branch. One of the most prominent is the PROFS case, a lawsuit filed in 1989 seeking to preserve electronic messages created during the Reagan administration. These messages included important evidence about the Iran Contra scandal. David A. Wallace's dissertation provides a detailed account of this case.<sup>22</sup> After gaining access to the records, Thomas Blanton, current director of the Archive, edited the book *White House E-Mail: The Top Secret Computer Messages the Reagan/Bush White House Tried to Destroy* (1995), which includes a collection of selected messages found in the released electronic records. Almost twenty years after filing the PROFS lawsuit, in 2007, the Archive went to the courts over the preservation of White House e-mail. The lawsuit, filed in conjunction with the Citizens for Responsibility and Ethics in Washington, sought the recovery of more than five million missing emails during the administration of George W. Bush. On 14 December 2009 an agreement was reached with the administration of President Barack Obama and the National Archives and Records Administration, setting the principles to resolve the problem of the missing electronic records.<sup>23</sup>

The Archive has also established an important presence in the media and in the web. Staff members have appeared in news programs,<sup>24</sup> the press<sup>25</sup> and documentaries.<sup>26</sup> And in

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[http://www.columbia.edu/cu/lweb/indiv/humanrights/news\\_events/2007/conference/index.html](http://www.columbia.edu/cu/lweb/indiv/humanrights/news_events/2007/conference/index.html) (Accessed December 3, 2009).

<sup>21</sup> See Jesse Hingson, "Open Veins, Public Transcripts: The National Security Archive as a Tool for Critical Pedagogy in the College Classroom," *Radical History Review* 102 (Fall 2008): 90-98.

<sup>22</sup> David A. Wallace, "The Public's Use of Federal Recordkeeping Statutes to Shape Federal Information Policy: A Study of the PROFS Case" (PhD Dissertation, University of Pittsburgh, 1997).

<sup>23</sup> Meredith Fuchs, "White House E-Mail Lawsuit Settled," UNREDACTED: The National Security Archive, Unedited and Uncensored, December 14, 2009, <http://nsarchive.wordpress.com/2009/12/14/white-house-e-mail-lawsuit-settled/> (Accessed January 7, 2010). A chronology of events for this case is available at the National Security Archive website. See <http://www.gwu.edu/~nsarchiv/news/20080417/chron.htm>

<sup>24</sup> For example, Tom Blanton was interviewed in NPR's All Things Considered during the 20<sup>th</sup> anniversary of the fall of the Berlin Wall. See "Official Discusses Release of Berlin Wall Documents," 9 November 2009, <http://www.npr.org/templates/story/story.php?storyId=120251027> (Accessed December 3, 2009).

<sup>25</sup> See for example Peter Carlson, "Eyes Only: [Redacted] In Its [Redacted] Offices, the National Security Archive Houses Stockpiles of [Redacted], Gotten From the Government by [Redacted]," *Washington Post* (8 May 2008),

addition to its website (<http://www.nsarchive.org>), the Archive has presence in the social networks Facebook (<http://www.facebook.com/NSArchive>) and Twitter (<http://twitter.com/NSArchive>), and a blog called “UNREDACTED: The National Security Archive, Unedited and Uncensored” (<http://nsarchive.wordpress.com/>).

Why does the National Security Archive exist? It can be argued this organization exists because of the shortcomings of the National Archives and Records Administration with ensuring that government agencies comply with the laws related to access to government information. The 2006 reclassification scandal, in which NARA secretly agreed with six government agencies to reclassify approximately 9,500 formerly declassified documents, is a reflection of these deficiencies.<sup>27</sup> The PROFS case presents another example. National Security Archive director Thomas S. Blanton concludes,

Perhaps that’s the final lesson of the White House e-mail case: We need a reinvented National Archives, a vigorous information watchdog. Otherwise, NARA will be relegated to the role of the nation’s attic; and there, among the cobwebs, will roam the ghost of government accountability.<sup>28</sup>

Nevertheless, it is important to point out that NARA’s legal responsibilities have their own limitations, particularly with regards to enforcement. For example, the Information Security Oversight Office (ISOO) is responsible for the policy and oversight of the security classification system. However, ISOO’s authority for oversight of the security classification system is limited

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<http://www.washingtonpost.com/wp-dyn/content/article/2008/05/07/AR2008050703965.html> (Accessed December 3, 2009).

<sup>26</sup> Blanton appears in the documentary *Secrecy*, a film by Peter Galison and Robb Moss. Senior analyst Peter Kornbluh appears in *The Judge and the General*, PBS documentary directed by Elizabeth Farnsworth and Patricio Lanfranco about the investigation against Augusto Pinochet in Chile.

<sup>27</sup> See Richard J. Cox, “The National Archives Reclassification Scandal,” *Records & Information Management Report* 22 (November 2006): 1-13.

<sup>28</sup> Thomas Blanton, ed., *White House E-Mail: The Top Secret Computer Messages the Reagan/Bush White House Tried to Destroy* (New York: New Press, 1995), 11. Scott Armstrong, who was the lead plaintiff for the PROFS case, also offered a strong opinion on NARA’s mission. He stated that the National Archives were “the warehouse for whatever other people decide they want to be remembered as,” instead of the repository of the country’s memory. See Wallace, “The Public’s Use of Federal Recordkeeping Statutes to Shape Federal Information Policy,” 528-529.

to identifying problems within the system and providing training to federal agencies. As political scientists Robert M. Pallitto and William G. Weaver state,

The only real power the ISOO has is in forcing uniformity of policy and process in classification determinations, which is an appreciable power but does not reach the deep problems of overclassification and abuse that have historically plagued the executive branch.<sup>29</sup>

As the above quote shows, secrecy is a historically government-wide problem, and even government initiatives to attack this problem have not been widely successful.<sup>30</sup> Therefore, I argue that even if NARA fully complies with its duty there is still a need of an organization like the National Security Archive. Beyond relating the Archive's existence to NARA's limitations, the organization should be studied in the context of the development of non-governmental organizations and the important role of civil society in a democratic system.

The past forty years has witnessed an emergence of non-governmental organizations from areas such as human rights, economic development, and international policy. These organizations, also called 'the third sector', have also established strong networks that facilitate the sharing of information and building strong strategies for advocacy, accountability and policy.<sup>31</sup> In the area of human rights, these networks have been crucial. In many of the cases considered for this proposal the National Security Archive collaborated with organizations such as the Center for Justice and Accountability and the *Asociación Pro Derechos Humanos de España*.

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<sup>29</sup> Robert M. Pallitto and William G. Weaver, *Presidential Secrecy and the Law* (Baltimore: John Hopkins University Press, 2007), 56.

<sup>30</sup> For example, see the work of the Commission on Protecting and Reducing Government Secrecy in 1997, lead by late Senator Patrick Moynihan. The commission's report called for profound changes in the security classification system, but the recommendations have not been implemented. See Senate, *Report of the Commission on Protecting and Reducing Government Secrecy: Pursuant to Public Law 236, 103<sup>rd</sup> Congress*. Washington, DC: U.S. Government Printing Office, 1997. Also see Daniel Patrick Moynihan, *Secrecy: The American Experience* (Yale University Press, 1998).

<sup>31</sup> For a study of these networks see Margaret E. Keck and Kathryn Sikkink, *Activists beyond Borders: Advocacy Networks in International Politics* (Ithaca: Cornell University Press, 1998).

It is also worth noticing the emergence in the past ten years of organizations internationally that, like the National Security Archive, work towards the accessibility of government records and freedom of information. In 2001 the South African History Archive (SAHA) launched the Freedom of Information Programme. SAHA, created in the 1980s by anti-apartheid activists, established this program to raise awareness about the 2000 Promotion of Access to Information Act. The organization submits requests of access to information, building a rich collection of South African government documents.<sup>32</sup> In Chile, the 2008 Transparency Law opened the doors for improving access to government documents. Following the model of the National Security Archive, *ArchivosChile* was established. This project, developed by the University of Chile's *Instituto de la Comunicación e Imagen* at the University of Chile and the Center of Investigation and Information in Washington, DC, uses the Transparency law to obtain and publish government documents from Chile.<sup>33</sup> The National Security Archive also serves as secretariat and financial sponsor for *freedominfo.org*, a website about freedom of information laws and initiatives worldwide. It includes information divided by regions and information about organizations that work in favor of open government.

As part of its work as a repository of declassified U.S. government documents, the National Security Archive has published an impressive number of documents through Electronic Briefing Books and the Digital National Security Archive, a commercial database with over 80,000 digitized documents within 33 collections.<sup>34</sup> In addition, the Archive has been an active participant in Congressional hearings about FOIA and government secrecy.

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<sup>32</sup> For more information on the program visit [http://www.saha.org.za/about\\_saha/freedom\\_of\\_information\\_programme.htm](http://www.saha.org.za/about_saha/freedom_of_information_programme.htm)

<sup>33</sup> See <http://archivoschile.org/?cat=17> (Accessed August 16, 2010).

<sup>34</sup> Digital National Security Archive, <http://nsarchive.chadwyck.com> (Accessed October 9, 2010)



## **2.0 LITERATURE REVIEW**

This literature review explores the relationship between archives, accountability and transitional justice. The main question addressed is: How do records creation, recordkeeping and records availability affect transitional justice and mechanisms of accountability for past human rights abuses? This review of the relevant literature puts into perspective the need of stronger research and contribution to the archival scholarship.

### **2.1 ACCOUNTABILITY**

Even though the word accountability has been increasingly used in a wide range of areas, the concept itself has not been clearly defined. However, theoretical discussions about accountability provide a solid ground for its analysis within different contexts. This section will lay the foundation for the application of the concept to this dissertation. This foundation is built from the scholarship in the areas of government accountability, political accountability and accountability for human rights abuses. For the purposes of this dissertation, accountability is explored in the

context of government and human rights and therefore it is defined as the responsibility of the state to respond to systematic human rights violations.<sup>35</sup>

This section will start with a general definition of accountability and will follow with a review of its main theories developed by the field of political science. Next, this essay will analyze accountability in the context of human rights abuses.

### **2.1.1 Defining accountability**

Robert D. Behn, lecturer in public policy at Harvard's Kennedy School, warns about the use of the phrase "to hold people accountable" without a clear understanding of the concept of accountability itself. Behn explains, "To 'hold people accountable' has become a cliché and, like all clichés, is a substitute for thinking. Indeed, using the phrase suggests that no real thinking is going on."<sup>36</sup> How is accountability defined?

*The Dorsey Dictionary of American Government and Politics* defines accountability as "The extent to which one must answer to higher authority – legal or organizational – for one's actions in society at large or within one's particular organizational position." It also defines accountability as "An obligation for keeping accurate records of property, documents, or funds."<sup>37</sup> The *International Encyclopedia of Public Policy and Administration* defines it as "A

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<sup>35</sup> This definition draws from Juan E. Méndez analysis of accountability for past human right violations. See Juan E. Méndez, "Accountability for past abuses" (The Helen Kellogg Institute for International Studies, 1996).

<sup>36</sup> Robert D. Behn, *Rethinking Democratic Accountability* (Washington, D.C.: Brookings Institution Press, 2001), 6.

<sup>37</sup> Jay M. Shafritz, *The Dorsey Dictionary of American Government and Politics* (Chicago: The Dorsey Press, 1988), 4.

relationship in which an individual or agency is held to answer for performance that involves some delegation of authority to act.”<sup>38</sup>

Looking at the definitions from the *Dorsey Dictionary* and the *International Encyclopedia*, Behn draws attention to the fact that neither of these definitions mentions punishment, but they focus on the responsibility to answer.<sup>39</sup> Political scientist Andreas Schedler also underscores the direct relationship between accountability and answerability. He explains that answerability is one of the two main connotations for political accountability, with enforcement being the second.<sup>40</sup> Schedler also relates accountability to a mechanism for preventing abuse of power. Accountability, he states, “implies subjecting power to the threat of sanctions; obliging it to be exercised in transparent ways; and forcing it to justify its acts.”<sup>41</sup> Richard Mulgan, Profesor Emeritus at the Australian National University’s Crawford School of Economics and Government, simply defines accountability as “a method of keeping the public informed and the powerful in check.”<sup>42</sup> Kevin Kearns, professor at the University of Pittsburgh Graduate School of Public and International Affairs, also relates accountability to answerability stating, “In its most narrow interpretation, *accountability* involves answering to a higher authority in the bureaucratic or interorganizational chain of command.”<sup>43</sup>

In short, these definitions incorporate elements of responsibility, answerability and sanctions to the concept of accountability. Despite the claims that the concept does not has a

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<sup>38</sup> Jay M. Shafritz, ed., *International Encyclopedia of Public Policy and Administration* (Boulder: Westview Press, 1998), 6.

<sup>39</sup> Behn, *Rethinking Democratic Accountability*, 4.

<sup>40</sup> Andreas Schedler, “Conceptualizing Accountability,” in *The Self-Restraining State: Power and Accountability in New Democracies*, ed. Andreas Schedler, Larry Diamond, and Marc F. Plattner (Boulder, Co.: Lynne Rienner Publishers, 1999), 14.

<sup>41</sup> Schedler, “Conceptualizing Accountability,” 14.

<sup>42</sup> R. G. Mulgan, *Holding Power to Account: Accountability in Modern Democracies* (Basingstoke, Hampshire: Palgrave Macmillan, 2003), 1.

<sup>43</sup> Kevin Kearns, *Managing for Accountability: Preserving the Public Trust in Public and Nonprofit Organizations* (San Francisco: Jossey-Bass Publishers, 1996), 7.

clear definition, it is nonetheless clear that accountability involves a process in which individuals, organizations and governments respond for their actions. This process can be achieved through legal requirements, regulations, and responding to the public. Kearns, who focuses his work on accountability for government and nonprofit organizations, emphasizes the variety of ways in which accountability can be achieved. In his words, “the term accountability generally refers to a wide spectrum of public expectations dealing with organizational performance, responsiveness, and even morality of government and nonprofit organizations.”<sup>44</sup>

In the context of transitional justice the concept of accountability is an important, yet challenging, element during the process of democratization. The very same definition of transitional justice is a question of accountability: during transitions from authoritarian rule, how does the new government confront past accounts of human rights violations? What mechanism can be implemented to determine responsibility for past abuses while not jeopardizing the democratization process? Edel Hughes, William Schabas and Ramesh C. Thakur explain that the function of accountability in transitional justice “is to reverse the tradition of official impunity so often prevalent in societies emerging from conflict, and perhaps deter future violators of human rights.”<sup>45</sup> Argentine lawyer Juan E. Méndez, president emeritus of the International Center for Transitional Justice, explains that accountability for past human rights violations is conditioned to the democratization process, a reality that provides shortcomings to full accountability. However, Méndez states, “it is increasingly recognized that making state criminals accountable says something about the democracy we are trying to establish, and that preserving memory and

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<sup>44</sup> Kearns, *Managing for Accountability*, 9.

<sup>45</sup> Edel Hughes, William Schabas, and Ramesh Chandra Thakur, eds., *Atrocities and International Accountability: Beyond Transitional Justice* (New York: United Nations University Press, 2007), 1.

settling human rights accounts can be part of the formula for a lasting peace, as opposed to a lull in the fighting.”<sup>46</sup>

Within this range of definitions and conceptual explanations there is one important element that, implicitly and explicitly, is present in this discussion: power. The possibility of sanctions, the enforcement of the rule of law, and the answerability of actions will depend on how to control power. Schedler puts it simply, “Without power, without the capacity to make decisions and the corresponding capacity to attribute decisions, it does not make any sense to talk about accountability.”<sup>47</sup>

### **2.1.2 Theories of accountability**

Can we go beyond providing a definition of the concept of accountability and present a framework that can better represent mechanisms of accountability? Mulgan explains that the analysis of accountability tends to rely on typologies distinguishing general types of accountability. He adds, “Many different typologies have been advanced, using a variety of different criteria, but no one typology has yet emerged as a standard or generally accepted.”<sup>48</sup> Perhaps this is an unreachable goal. Nevertheless, this does not refrain from elaborating a framework to understand how it functions. In the area of government accountability, political scientists have discussed various models, one of which is Andreas Schedler.

Schedler’s “Conceptualizing Accountability” is the starting point for the book *The Self-Restraining State: Power and Accountability in New Democracies* (1999), a collection of essays

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<sup>46</sup> Méndez, “Accountability for past abuses,” 2.

<sup>47</sup> Schedler, “Conceptualizing Accountability,” 19.

<sup>48</sup> Mulgan, *Holding Power to Account: Accountability in Modern Democracies*, 30.

that examines accountability from the perspective of government and new democracies. Schedler defines political accountability denoting answerability and enforcement. The former means that public officials are obliged to inform what they do, while the latter refers to the ability of imposing sanctions on those who violated their responsibilities. There are three dimensions to political accountability: enforcement, monitoring, and justification, with the latter two being part of answerability. The main role of monitoring, Schedler explains, “includes finding facts and generating evidence,” while justification “implies the right to receive an explanation and the corresponding duty to justify one’s conduct.”<sup>49</sup> The dimension of enforcement has as its main goal to move beyond monitoring and justification by providing ways to reward or punish actions. In other words, those who are held accountable not only answer for their actions but also face possible sanctions. Albert Jacob Meijer, professor at the Uthrecht School of Governance, provides a conceptualization very similar to Schedler’s, categorizing accountability into three phases: information phase, discussion phase and sanction phase.<sup>50</sup>

In 2008, Schedler presented an updated version, in Spanish, of this essay. In “¿Qué es la Rendición de Cuentas?” Schedler emphasizes that the three dimensions are not necessarily dependent of each other. In other words, mechanisms of accountability can be based on monitoring and justification, but not enforcement. Truth commissions are a good example, since they do not have the power to impose sanctions.<sup>51</sup>

Mulgan also provides an analysis similar to Schedler’s dimensions of accountability. Instead of using the terms monitoring, justification and enforcement, Mulgan classifies processes

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<sup>49</sup> Schedler, “Conceptualizing Accountability,” 15.

<sup>50</sup> Albert Jacob Meijer, “Accountability in an Information Age: Opportunities and Risks for Records Management,” *Archival Science* 1, no. 4 (2001): 363. Also see Albert Jacob Meijer, “Trust this Document: ICTs, Authentic Records, and Accountability,” *Archival Science* 3 (2003): 275-290.

<sup>51</sup> Andreas Schedler, “¿Qué es la Rendición de Cuentas?” *Cuadernos de Transparencia* 3 (2008): 20.

of accountability into three stages: information, discussion and rectification. He also frames his discussion using four dimensions in the form of questions: 1) who are accountable?, 2) to whom are they accountable to?, 3) for what are they accountable?, and 4) how are they accountable?<sup>52</sup> Drawing from these dimensions, Mulgan explains a varied number of accountability mechanisms. In the specific sphere of government accountability Mulgan includes mechanisms where the public has direct access to information, such as freedom of information laws.<sup>53</sup>

One important question addresses the issue of who has the responsibility and power to require answers from public officials. Are these powers developed within the same government, outside of it or from both? In that regards other scholars have provided analysis. Guillermo O'Donnell, who focuses on democratization processes in Latin America during transitions from authoritarianism, introduces the concepts of horizontal and vertical accountability.<sup>54</sup> Simply stated, horizontal accountability refers to the existence of state agencies within the government with the powers to oversee and/or sanction activities of other agencies. O'Donnell's includes the executive, legislative and judicial powers as part of this spectrum.<sup>55</sup> Vertical accountability, on the other hand, refers to the participation of civil society in mechanisms of accountability. While elections is one of the main mechanisms of vertical accountability, the work of non-governmental organizations (NGOs) is also considered part of this dimension.

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<sup>52</sup> Mulgan, *Holding Power to Account: Accountability in Modern Democracies*, 22.

<sup>53</sup> Mulgan, *Holding Power to Account*, 98-103.

<sup>54</sup> Guillermo O'Donnell, "Horizontal Accountability and New Polyarchies," (working paper, The Helen Kellogg Institute for International Studies, University of Notre Dame, April 1998). A similar essay was published in *The Self-Restraining State* under the title "Horizontal Accountability in New Democracies."

<sup>55</sup> This conceptualization of horizontal accountability raises questions of been too simplistic and not addressing the essential issue of the distribution of power within the government and therefore the limitations this bring to government agencies responsible for oversight. Still, the concept itself helps differentiate accountability mechanisms within the government with accountability initiatives coming from civil society.

A deeper analysis of the role of civic society, NGOs, social movements and the media is presented in *Enforcing the Rule of Law: Social Accountability in the New Latin American Democracies* (2006). In this collection of essays, the editors Enrique Peruzzotti and Catalina Smulovitz argue that O'Donnell's concept of vertical accountability focuses on the electoral process and therefore it fails to address the role of the aforementioned groups. Therefore, they present the concept of social accountability, which they define as "a nonelectoral yet vertical mechanism of control of political authorities that rests on the actions of an array of citizens' associations and movements and the media."<sup>56</sup> They list the network of human rights organizations in Latin America that challenged abuses during authoritarian rule as one of the precursors of social accountability. During and after transitions, social accountability continued to evolve taking actions on a number of issues which Peruzzotti and Smulovitz classify into four main areas: citizens security, judicial autonomy, electoral fraud and governmental corruption.<sup>57</sup> Even with the important democratization steps that followed the transitions from authoritarianism, countries have continued to face significant challenges in terms of the checks and balances in governments. A number of countries still have weak judiciary systems and high levels of corruption, making horizontal accountability a significantly limited mechanism.<sup>58</sup>

The collection of essays in *Enforcing the Rule of Law* presents a series of case studies covering different levels of social accountability from various Latin American countries. The essays also incorporate social movements theory to explain mobilization, citizens' activation and

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<sup>56</sup> Enrique Peruzzotti and Catalina Smulovitz, "Social Accountability: An Introduction," in Enrique Peruzzotti and Catalina Smulovitz, eds., *Enforcing the Rule of Law: Social Accountability in the New Latin American Democracies* (Pittsburgh: University of Pittsburgh Press, 2006), 10.

<sup>57</sup> Pruzzotti and Smulovitz, "Social Accountability," 12.

<sup>58</sup> Pruzzotti and Smulovitz, "Social Accountability," 3-4.



participation,<sup>59</sup> and the role of the media as an agent of social accountability.<sup>60</sup> The essays also include analysis of the difficulties of implementing social accountability. Claudio A. Fuentes, in “Violent Police, Passive Citizens: The Failure of Social Accountability,” discusses the decline of human rights organizations activism in Chile after gaining a significant momentum and role during the first years of transition from the Pinochet dictatorship, particularly in relation to human rights violations by the police after the transition. Framing the human rights problem as only part of the dictatorship, Fuentes argues, is one of the main reasons for this decline.<sup>61</sup>

This conceptualization of social accountability has been applied to the scholarship of human rights. Thomas Pegram, doctoral candidate in Politics at the University of Oxford, draws from this concept and from O’Donnell’s horizontal accountability to discuss the work of the *Defensoría del Pueblo* in Perú (the Peruvian Human Rights Ombudsman), an autonomous government agency created in 1996. Pegram discusses how the *Defensoría* was able to establish a strong relation with civil society and nongovernmental groups during the rule of Alberto Fujimori. Indeed, Pegram explains, “From its creation in 1996 to the fall of the Fujimori Government in November 2000, the *Defensoría* operated, practically, as the sole democratic agent of accountability within the state and was recognized as much by civil society and

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<sup>59</sup> See particularly Ana Tereza Lemos-Nelson and Jorge Zaverucha, “Multiple Activation as a Strategy of Citizen Accountability and the Role of the Investigating Legislative Commissions,” p. 75-114, and Nuria Cunill Grau, “Critical Junctures of Social Accountability: Lessons from Latin America,” p. 115-133.

<sup>60</sup> See Enrique Peruzzotti, “Media Scandals and Social Accountability: Assessing the Role of the Senate Scandal in Argentina,” 249-271, and Silvio R. Waisbord, “Reading Scandals: Scandals, Media, and Citizenship in Contemporary Argentina,” 272-303.

<sup>61</sup> Claudio A. Fuentes, “Violent Police, Passive Citizens: The Failure of Social Accountability in Chile,” in Peruzzotti and Smulovitz, *Enforcing the Rule of Law: Social Accountability in the New Latin American Democracies*, 167–168.

international observers.”<sup>62</sup> This case, Pegram argues, shows the possibilities of achieving synergy between elements of horizontal accountability and social accountability.

An exploration of the relation between archives and accountability can use the dimensions presented by Schedler. In order to achieve answerability and enforcement the availability of records is essential. Furthermore, its non-availability could affect the processes that lead from answerability to enforcement. O’Donnell also underscores the importance of records. In his list of suggestions on how to enhance horizontal accountability, O’Donnell includes that “reliable and timely information is essential.”<sup>63</sup> And as explained above, Richard Mulgan underscores freedom of information as an important mechanism of government accountability.

This section has aimed to provide a general assessment of various theories of accountability developed in the field of political science. It has discussed concepts and steps that show the representation of accountability mechanisms. In the following sections, this analysis will focus on accountability in the context of past human rights abuses, and more specifically in regards to transitional justice in Latin America.

## **2.2 TRANSITIONAL JUSTICE**

During a 1991 lecture at the Hastings College of Law, Chilean human rights lawyer José Zalaquett discussed the challenge President Patricio Aylwin faced regarding the question of addressing human rights abuses during the dictatorship of Gen. Augusto Pinochet. Zalaquett, a

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<sup>62</sup> Thomas Pegram, “Accountability in Hostile Times: the Case of the Peruvian Human Rights Ombudsman 1996-2001,” *Journal of Latin American Studies* 40, no. 1 (February 2008): 52.

<sup>63</sup> O’Donnell, “Horizontal Accountability,” p. 19.

leading figure in the implementation of the Chilean National Commission on Truth and Reconciliation, explains,

At a societal level, the equivalent of penance is criminal justice. Yet the Chilean government's assessment of the situation led it to conclude that priority ought to be given to disclosure of truth. This disclosure was deemed an inescapable imperative. Justice would not be forgone, but pursued to the extent possible given the existing political restraints. . . The underlying assumption, which I share, was that if Chile gave truth and justice equal priority, the result might well have been that neither could be achieved. Fearing that official efforts to establish the truth would be the first step toward widespread prosecutions, the military would have determinedly opposed such efforts.<sup>64</sup>

This statement by Zalaquett underscores the important and difficult questions in countries during transition from authoritarianism and civil wars: how to reckon with past human rights violations? It is better to punish or not? It is better to remember or to forget and turn the page? The majority of the countries in Latin America faced these questions since the 1980s, a question also addressed by post communist countries in Eastern Europe during the early 1990s. Within this context, the field of transitional justice emerges. Scholars from a variety of disciplines have been debating and analyzing the implementation of transitional justice mechanisms and its impact to such transitions. This scholarship has raised important issues related to archives and records, yet an analysis of these issues by archivists is scarce. A brief historical background of how these events built the concept of transitional justice follows, along with a definition of the concept, its theoretical debates and its relation to archives.

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<sup>64</sup> José Zalaquett, "Balancing Ethical Imperatives and Political Constraints: The Dilemma of New Democracies Confronting Past Human Rights Violations," *Hastings Law Journal* 43 (August 1992): 1432-1433. For a more detailed description of the decision process and limitations that led President Aylwin to embrace this policy, which he called 'Justice to the extent possible,' see Steve J. Stern, *Reckoning with Pinochet: The Memory Question in Democratic Chile, 1989-2006* (Durham: Duke University Press, 2010).

### 2.2.1 Definition and origins of transitional justice

The *Encyclopedia of Genocide and Crimes Against Humanity* (2004) defines transitional justice as “a field of activity and inquiry focused on how societies address legacies of past human rights abuses, mass atrocity, or other forms of severe social trauma, including genocide or civil war, in order to build a more democratic, just, or peaceful future.”<sup>65</sup> This definition entails questions of accountability for past human rights abuses.

According to Paige Arthur, Deputy Director of the Research Unit at the International Center for Transitional Justice, there is no clear agreement on the origins of transitional justice. There is not even a clear account of who came up with the name.<sup>66</sup> As Arthur explains, the Nuremberg trials can be considered the event that set some principles of what became transitional justice. Social scientist Jon Elster places transitional justice back to Athens in 411 B.C. and states that “[d]emocratic transitional justice is almost as old as democracy itself.”<sup>67</sup> Notwithstanding the non existence of the concept “transitional justice”, Elster shows in his work that elements of amnesty, retribution, restoration and transition negotiations have been historically present in political transformations such as Athens, seventeenth century England, nineteenth century France and during the United States independence.

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<sup>65</sup> Dinah Shelton, ed., *Encyclopedia of Genocide and Crimes Against Humanity* (Detroit: Macmillan Reference, 2004), 1045.

<sup>66</sup> Paige Arthur, “How “Transitions” Reshaped Human Rights: A Conceptual History of Transitional Justice,” *Human Rights Quarterly* 31 (2009): 321-367. Arthur traces the first mention of the word “transitional justice” back to 1992 in an article written by Mary Jo Palumbo for the *Boston Herald*.

<sup>67</sup> Jon Elster, *Closing the Books: Transitional Justice in Historical Perspective* (Cambridge: Cambridge University Press, 2004), 3.

### 2.2.2 The scholarship of transitional justice

Transitional justice as a theoretical framework builds from the transitions that occurred in Latin America since 1978.<sup>68</sup> One of the first and more recognized cases is Argentina, which started its transition in 1983. The elected president Raúl Alfonsín and his government created a commission of inquiry to investigate human rights violations during the “dirty war.” The commission, called the *Comisión Nacional sobre la Desaparición de Personas* (CONADEP), reported 8,960 people disappeared.<sup>69</sup> In 1985 the administration prosecuted nine leaders of the military juntas that ruled from 1976-1983. Five were found guilty and given sentences that ranged from four years to life in prison.<sup>70</sup> However, significant pressure from the military, including attempts of another coup, and disagreements within the Alfonsín government led to the Full Stop Law and Due Obedience Law, bringing to an end the criminal prosecutions.<sup>71</sup> The Argentinean case offers a microcosm of what the rest of the region experienced: transitions with frail democracies and a weak judicial system, and the pressure of a military that threatened another coup if the new government tried criminally its members.

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<sup>68</sup> By 1978, only three countries in Latin America were democracies: Colombia, Costa Rica, and Venezuela. Frances Hagopian and Scott P. Mainwaring, eds., *The Third Wave of Democratization in Latin America: Advances and Setbacks* (Cambridge: Cambridge University Press, 2005), 2.

<sup>69</sup> Argentina. Comisión Nacional sobre la Desaparición de Personas, *Nunca Más: Informe de la Comisión Nacional sobre la Desaparición de Personas*, 6th ed. (Buenos Aires: EUDEBA, 2003).

<sup>70</sup> See “Juicio a las Juntas Militares (Causa 13/84),” The Hague Justice Portal, <http://www.haguejusticeportal.net/eCache/DEF/9/059.html> (Accessed October 9, 2010)

<sup>71</sup> Arthur, “How “Transitions” Reshaped Human Rights,” p. 322-323. Both laws were ‘amnesty laws’ to put an end to trials of human rights abuses committed during the period of the military juntas. The Full Stop Law was adopted in 1986 and established a statute of limitation for the prosecution of human rights cases, opening a window of just sixty days after the signing of the law for any criminal action against alleged perpetrators of human rights abuses. The Due Obedience Law was adopted a year later, establishing that military and security officers, and their subordinates cannot be tried for human rights abuses since they were acting upon the orders to their superiors. In 2003 the National Congress repealed both laws, and in 2005 the Argentine Supreme Court declared both laws unconstitutional. See Christine A.E. Bakker, “A Full Stop to Amnesty in Argentina: The Simón Case,” *Journal of International Criminal Justice* 3, no. 5 (November 2005): 1106-1120.

During this same period of political transformation in Latin America scholars from fields such as political science and human rights law engaged in an important discussion regarding the legacy of past human rights abuses. Political scientists Guillermo O'Donnell and Philippe C. Schmitter edited a four volume series titled *Transitions from Authoritarian Rule*. In the fourth volume, *Transitions from Authoritarian Rule: Tentative Conclusions about Uncertain Democracies* (1986), O'Donnell and Schmitter portray the transitions from authoritarian rule as a “political chess” in which several players are involved, where rules evolve, and where there are not necessary clear winners and losers.<sup>72</sup> This “political chess” is shaped by negotiations, many of which are driven by a few. In the words of O'Donnell and Schmitter,

Ironically, such modern pacts move the polity toward democracy by undemocratic means. They are typically negotiated among a small number of participants representing established (and often highly oligarchical) groups or institutions; they tend to reduce competitiveness as well as conflict; they seek to limit accountability to wider publics; they attempt to control the agenda of policy concerns; and they deliberately distort the principle of citizen equality. Nonetheless, they can alter power relations, set loose new political processes, and lead to different (if often unintended) outcomes.<sup>73</sup>

O'Donnell and Schmitter, although recognizing how difficult it is to deal with past accounts of human rights violations, clearly state that ignoring the issue is the worst possible option. They proposed as the “least worst” strategy “to impose judgment upon those accused of gross violations of human rights.”<sup>74</sup> Diane F. Orentlicher, Professor of Law at American University Washington, reaches a similar conclusion. In her reflection about the developments of transitional justice since the early 1980s, she strongly concludes that, “even in the ‘early days’ human rights and other professional experts saw disclosure of the truth about past abuses as a

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<sup>72</sup> Guillermo O'Donnell and Philippe C. Schmitter, *Transitions from Authoritarian Rule: Tentative Conclusions about Uncertain Democracies* (Baltimore: John Hopkins University Press, 1986), 66.

<sup>73</sup> O'Donnell and Schmitter, *Transitions from Authoritarian Rule*, 38.

<sup>74</sup> O'Donnell and Schmitter, *Transitions from Authoritarian Rule*, 30.

non-negotiable moral obligation of governments.”<sup>75</sup> And even if the state decides to follow the path of oblivion, wounds of a traumatic past would eventually arise. Mark Arenhövel makes reference to the fact that despite Spain’s decision during the transition from the dictatorship of Gen. Franco not to address the legacy of human rights abuses, more than 60 years later more communities are challenging this decision and opening venues to address the memory of Spain under Franco. Therefore, Arenhövel states, “what can be learned from the Spanish case is that sooner or later every political entity has to come to terms with its past.”<sup>76</sup>

Political scientist Samuel P. Huntington, in his seminal work *The Third Wave: Democratization in the Late Twentieth Century* (1991), also explores the question of addressing crimes committed by the past regime. Naming it “the torturer problem,” Huntington discusses the arguments presented for and against criminal prosecution. While those in favor of punishment argued there is a moral obligation owed to victims and this will strengthen the rule of law in a democracy, the opponents warn of how prosecutions can affect democratization and reconciliation processes.<sup>77</sup> Still, decisions go back to politics. Similar to O’Donnell and Schmitter’s idea of “political chess,” Huntington also concludes that “what happened was little affected by legal and moral considerations,” and whatever decisions were made “[i]t was shaped almost exclusively by politics, by the nature of the democratization process, and by the distribution of political power during and after the transition.”<sup>78</sup>

Scholars in this area also gathered to discuss how countries faced past abuses. In March 1992, a two-day conference was held in Austria with participants from twenty-one countries that

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<sup>75</sup> Diane F. Orentlicher, “‘Settling Accounts’ Revisited: Reconciling Global Norms with Local Agency,” *The International Journal of Transitional Justice* 1 (2007): 12.

<sup>76</sup> Mark Arenhövel, “Democratization and Transitional Justice,” *Democratization* 15, no. 3 (June 2008): 574.

<sup>77</sup> Huntington, *The Third Wave: Democratization in the Late Twentieth Century*, 213–214.

<sup>78</sup> Huntington, *The Third Wave*, 215.

dealt or were dealing with transitions from authoritarian regimes. This was not the only conference during that time. In 1988, the conference “State Crimes: Punishment or Pardon” took place at the Aspen Institute, and the Institute for Democracy in South Africa hosted the conference “Justice in Times of Transition” in 1994.<sup>79</sup> In Austria, participants coming from Europe, Africa and Latin America discussed how the countries were dealing with past accounts of human rights violations. A product of this conference was the three-volume publication *Transitional Justice: How Emerging Democracies Reckon with Former Regimes* (1995). One of the main goals of this publication was to put together the best available material at the moment about transitional justice. This material includes essays from a variety of disciplines discussing transitional justice (volume I), case studies from twenty-one countries (volume II), and a selection of primary documents, which include legislations and excerpts from reports of truth commissions (volume III). One of the sections included in Volume I is titled “Documenting the Former Regime: Commissions of Inquiry,” covering issues related to the work of truth commissions and documentation. In that section, Margaret Popkin and Naomi Roht-Arriaza underscore the goal of a truth commission to establish an authoritative record about past human rights violations.<sup>80</sup> They also discuss how truth commissions contribute to establishing accountability for past abuses, and explain two ways in which this is addressed: directly naming perpetrators of the abuses and passing information to the judiciary for possible criminal

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<sup>79</sup> Paige Arthur, “How ‘Transitions’ Reshaped Human Rights: A Conceptual History of Transitional Justice,” *Human Rights Quarterly* 31, no. 2 (May 2009): 325.

<sup>80</sup> Margaret Popkin and Naomi Roht-Arriaza, “Truth as Justice: Investigatory Commissions in Latin America,” in Neil J. Kritz, ed., *Transitional Justice: How Emerging Democracies Reckon with Former Regimes* (Washington, D.C.: United States Institute of Peace Press, 1995), 262-289.



prosecution. Yet, Popkin and Roht-Arriaza recognize the limitations of these approaches and that they are affected by the political and social environment in which they are applied.<sup>81</sup>

The scholarship about transitional justice has significantly grown since the publication of Kritz's volumes, even leading to the publication since 2007 of a scholarly journal, *The International Journal of Transitional Justice*. Ruti G. Teitel's *Transitional Justice* (2000) provides the most comprehensive work about this subject. Teitel challenges the general understanding of punishment as a necessary component in transitions, and emphasizes the social and political factors that shape the rule of law and other mechanisms of justice. In her own words, "the conception of justice in periods of political change is extraordinary and constructivist: It is alternately constituted by, and constitutive of, the transition."<sup>82</sup> Therefore, justice during these periods is "shaped by the political circumstances."<sup>83</sup>

Teitel subsequently discusses five legal responses implemented during transitions: criminal justice, historical justice, reparatory justice, administrative justice and constitutional justice. The first two forms will be discussed in the section about archives, transitional justice and accountability below since Teitel incorporates issues related to records creation and recordkeeping to her analysis. After discussing these forms of justice, a discussion built through a number of cases including Argentina, South Africa and Eastern Europe, Teitel emphasizes that there is no single answer to the questions addressed by transitional justice. She concludes,

There is no single correct response to a state's repressive past. Which response is appropriate in any given regime's transition is contingent on a number of factors – the

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<sup>81</sup> This includes reluctance by the judicial system to prosecute and the existence of amnesty laws. Although there have been improvements since the publication of this book, the range of international and domestic trials are low compared with the amount of human rights abuses. See also from this volume: Thomas Buergenthal, "The United Nations Truth Commission for El Salvador," 292-325 and Douglass W. Cassel, Jr., "International Truth Commission and Justice," 326-333.

<sup>82</sup> Ruti G. Teitel, *Transitional Justice* (Oxford: Oxford University Press, 2000), 6.

<sup>83</sup> Teitel, *Transitional Justice*, 6.

affected society's legacies or injustice, its legal culture, and political transitions – as well as on the exigencies of its transitional political circumstances.<sup>84</sup>

What is the state of transitional justice in the twenty first century? According to Naomi Roht-Arriaza, transitional justice has experienced transformations. Roht-Arriaza explains that a new trend in transitional justice is the simultaneous existence of various mechanisms to deal with human rights violations. For example, while in the 1990s truth commissions were seen as an alternative to criminal prosecution, recent commissions are now seen as complements to criminal investigations.<sup>85</sup> The final years of the twentieth century and the beginning of the twenty first century have witnessed an increasing number of international and national trials against perpetrators of human rights abuses. The detention of General Augusto Pinochet in London in 1998, explained below, dismissed the notion that head of states and high-ranking officials from a repressive rule were immune of judicial accountability. It is my argument that the availability of records is one of the key reasons of this transformation from non-criminal sanctions to criminal sanctions.

Recent works on transitional justice have also looked at questions of research and assessment. In other words, how scholars and practitioners should evaluate the effects of transitional justice? From the discussion above, it is clear that transitional justice mechanisms are influenced by numerous variables and that each experience is in some degree unique. Nevertheless, methods have been proposed to assess transitional justice. Phuong Pham and Patrick Vinck propose a framework based on empirical research for an analysis of decision-

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<sup>84</sup> Teitel, *Transitional Justice*, 219.

<sup>85</sup> Naomi Roht-Arriaza, "The New Landscape of Transitional Justice," in Naomi Roht-Arriaza and Javier Mariezcurrena, eds., *Transitional Justice in the Twenty-First Century: Beyond Truth Versus Justice* (Cambridge: Cambridge University Press, 2006), 9.

making, and program and policy development.<sup>86</sup> The authors underscore the importance of gathering data from local communities, which can offer an assessment of the needs and attitudes towards transitional justice mechanisms. Roger Duthie, from the International Center for Transitional Justice, presents a research approach that relates transitional justice with development, which includes issues such as poverty, governance and social rights.<sup>87</sup>

Recognizing the need to study the impact of transitional justice and the importance of addressing the questions about the different outcomes of the implementation of mechanisms, *Assessing the Impact of Transitional Justice: Challenges for Empirical Research* (2007) presents essays from fourteen scholars who provide their analysis of the field. Neil Kritz discusses how empirical research contributes to the understanding of policy making in countries under transition. Furthermore, he highlights topics from the field of transitional justice that need more research. One of these topics is directly related to archives. Kritz explains,

Noncriminal sanctions, such as purges, lustration, and *public access to security files*, are a crucial piece of transitional justice programs and have been featured, in one combination or another, in almost every transitional justice case, yet they continue to get short shrift in the research literature.<sup>88</sup> (Emphasis added)

Kritz also brings to the attention a paradigm shift, in which countries have accepted that dealing with the past is needed. Similarly, there's another shift from early supporters of truth commissions. After the noteworthy successes of criminal accountability since the late 1990s,

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<sup>86</sup> Phuong Pham and Patrick Vinck, "Empirical Research and the Development and Assessment of Transitional Justice Mechanisms," *The International Journal of Transitional Justice* 1, no. 2 (July 2007): 231-248.

<sup>87</sup> Roger Duthie, "Toward a Development-sensitive Approach to Transitional Justice," *The International Journal of Transitional Justice* 2, no. 3 (n.d.): 292-309.

<sup>88</sup> Neil Kritz, "Policy Implications of Empirical Research on Transitional Justice," in Hugo Van Der Merwe, Victoria Baxter, and Audrey R. Chapman, eds., *Assessing the Impact of Transitional Justice: Challenges for Empirical Research* (Washington, D.C.: United States Institute of Peace Press, 2008), 19.

these early supporters viewed truth commissions as “soft alternatives that perhaps were not that useful after all.”<sup>89</sup>

Various authors in the book address the difference between what transitional justice mechanisms ideally should achieve versus their real results. Hugo van der Merwe argues that viewing transitional justice as a process to address the demand for accountability “is an optimistic assumption and not always correct.”<sup>90</sup> And Janet Cherry takes on truth commissions and warns that “it is important to recognize that although all truth commissions have, at least by definition, the objective of finding the truth, this is not the case with all transitional justice mechanisms.”<sup>91</sup> In terms of the application of research, methods discussed in the book include oral history,<sup>92</sup> analysis of confessions from perpetrators of human rights abuses,<sup>93</sup> and comparative qualitative research.<sup>94</sup> The problems caused by the destruction of records are also addressed. Audrey R. Chapman discusses the challenges to fulfill the responsibilities of truth finding. Among the challenges, Chapman identifies as a common problem the “systematic suppression or destruction of incriminating evidence,” and uses as examples the experiences of the truth commissions from Guatemala and South Africa.<sup>95</sup>

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<sup>89</sup> Kritz, “Policy Implications of Empirical Research on Transitional Justice,” 17.

<sup>90</sup> Hugo van der Merwe, “Delivering Justice during Transition: Research Challenges,” in Van Der Merwe, Baxter, and Chapman, *Assessing the Impact of Transitional Justice: Challenges for Empirical Research*, 115.

<sup>91</sup> Janet Cherry, “Truth and Transitional Justice in South Africa,” in *Assessing the Impact of Transitional Justice*, 251.

<sup>92</sup> Matilde González, “Local Histories: A Methodology for Understanding Community Perspectives on Transitional Justice,” in *Assessing the Impact of Transitional Justice*, 295-311.

<sup>93</sup> Leigh A. Payne, “Confessional Performances: A Methodological Approach to Studying Perpetrators’ Testimonies,” in *Assessing the Impact of Transitional Justice*, 227-247. Payne also wrote a book on this topic. See Leigh A. Payne, *Unsettling Accounts: Neither Truth nor Reconciliation in Confessions of State Violence* (Durham: Duke University Press, 2008).

<sup>94</sup> Victor Espinoza Cuevas and María Luisa Ortiz Rojas, “Practical Considerations in Comparative Research: Approaching Problems from the Bottom and from Within,” in Van Der Merwe, Baxter, and Chapman, *Assessing the Impact of Transitional Justice: Challenges for Empirical Research*, 313-324.

<sup>95</sup> Audrey R. Chapman, “Truth Finding in the Transitional Justice Process,” in *Assessing the Impact of Transitional Justice*, 99.

A more ambitious approach comes from the "Transitional Justice Database," a project created in 2005 at the University of Wisconsin by political scientists Leigh A. Payne, Tricia D. Olsen and Andrew G. Reiter. The project has collected data from more than 900 transitional justice mechanisms covering the period 1970-2007 with the objective of analyzing the implementation of the mechanisms and whether they are effective.<sup>96</sup> The researchers focused on trials, truth commissions, reparations, amnesties and lustration policies. As part of this project Olsen, Payne and Reiter published the book *Transitional Justice in Balance: Comparing Processes, Weighing Efficacy*. The authors examined the data from the project to test a number of hypotheses from the transitional justice literature. Their conclusions challenge arguments from the literature that proposes a particular transitional justice mechanism as the best approach. Their findings do confirm the advocates for a holistic approach, or the implementation of multiple mechanisms.<sup>97</sup>

From the research issues mentioned above, and particularly from Neil Kritz, archivists interested in human rights issues should consider the possibilities of developing a research agenda based on the archival implications of accountability for past human rights abuses. Topics such as privacy, policy, archival ethics and preservation should be examined in more depth. This is not to say that nothing has been done. There is a growing community of archivists discussing and getting actively involved with human rights issues.<sup>98</sup> Nevertheless, the archival community

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<sup>96</sup> The database is available at <http://www.tjdbproject.com/>. The project's website is <https://sites.google.com/site/transitionaljusticedatabase/>.

<sup>97</sup> Tricia D. Olsen, Leigh A. Payne and Andrew G. Reiter, *Transitional Justice in Balance: Comparing Processes, Weighing Efficacy* (Washington, DC: U.S. Institute of Peace, 2010): 153.

<sup>98</sup> The International Council on Archives has a Human Rights Group, and in 2009 the Society of American Archivists Human Rights Archives Roundtable was established. In addition, a number of conferences have taken place. For example, on October 2007 the Center for Human Rights Documentation & Research at Columbia University hosted the conference "Human Rights Archives and Documentation: Meeting the Needs of Research, Teaching, Advocacy and Social Justice." Video recordings of all the conference sessions are available online at [http://www.columbia.edu/cu/lweb/div/humanrights/news\\_events/2007/conference/](http://www.columbia.edu/cu/lweb/div/humanrights/news_events/2007/conference/) (Accessed April 2, 2010)

needs to further examine how archives affect transitional justice and accountability mechanisms. This will require building stronger case study research and comparative analysis. For example, archivists should perform comparative studies about archives of truth commissions. Many of these truth commissions are over ten to twenty years old. What effects do the archives of these commissions of inquiry had in the countries after the transitions? How does access to these archives compares among different experiences?

Another important topic is the examination of freedom of information and transparency laws enacted after the transitions. Which countries have established these laws and information policies as part of their transitions? For these countries, how transparency laws and freedom of information is applied? Finally, there's a need to study the work of the archivists in these experiences. What roles did archivists played during the periods of authoritarian rule and during the transitions? How their work was influenced by their own stances on human rights and justice?

### **2.2.3 Accountability for human rights abuses**

At the heart of transitional justice lies the important component of accountability for the legacy of human rights abuses. This element in turn raises major legal and ethical questions. Is criminal prosecution required to achieve accountability? Should non-criminal mechanisms like truth commissions be considered adequate mechanisms of accountability? The literature reviewed below shows the difficulty of these questions.

Zalaquett<sup>99</sup> argues that addressing past human rights violations is both a political and ethical problem. Drawing from Max Weber's idea of ethics of responsibility, Zalaquett provides three ethical principles that might be pursued: a) a policy to address past human rights abuses should aim to prevent recurrence of the abuses and repair the damage caused; b) the policy should recognize past human rights violations and be adopted by democratic institutions; and c) the country must maintain discretion regarding the content of the policy. These principles might be weighted with the particular circumstances each state faces. Zalaquett illustrates these challenges with the Chilean truth commission, of which he was a commissioner.

Juan E. Méndez agrees with Zalaquett's argument that newly democratic governments face constraints that will affect the accountability of past abuses. However, he warns that this line of reasoning "has led many others to assume too little of what governments can *effectively* do under the circumstances and not enough of what they *ought to do*."<sup>100</sup> Méndez also addresses various misconceptions about transitional justice. These misconceptions include the idea that truth is always preferable to justice and that criminal prosecutions are counterproductive to social reconciliation.

Andreas Schedler also briefly explains accountability in the context of human rights and transitions from authoritarian rule. He stresses the importance of sanctions in the accountability process, even calling public denunciation without legal sanctions "accountability light."<sup>101</sup> He also refers to truth commissions as an example of mechanisms that are limited to the informative aspect of accountability. Even though these commissions have done a remarkable job bringing to light what happened during a period of conflict, Schedler explains, "considering the severity of

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<sup>99</sup> José Zalaquett, "Balancing Ethical Imperative and Political Constraints: The Dilemma of New Democracies Confronting Past Human Rights Violations," *Hastings Law Journal* 43 (August 1992): 1425-1438.

<sup>100</sup> Méndez, "Accountability for Past Abuses," 3.

<sup>101</sup> Schedler, "¿Qué es la Rendición de Cuentas?," 19.

the offenses, it is debatable if these commissions represent a good example of accountability that can rescind elements of sanction.”<sup>102</sup>

The increasing discussion about transitional justice does not appear only in the scholarship. Non-governmental and international organizations have been founded since the late 1990s, while other established human rights organizations, like Human Rights Watch, have been important players providing documentation of human rights abuses and denouncing impunity. One example is the International Center for Transitional Justice (ICTJ), founded on 1 March 2001. The mission statement states that the ICTJ “works to redress and prevent the most severe violations of human rights by confronting legacies of mass abuse.” In addition, “ICTJ seeks holistic solutions to promote accountability and create just and peaceful societies.”<sup>103</sup> As part of its work, the Center assists countries dealing with accountability for past human rights violations. The Center also has a Research Unit, responsible for data gathering, investigation and publication of findings of a variety of topics related to transitional justice. The extensive number of publications from the ICTJ includes “Documenting Truth,” written by Louis Bickford, Patricia Karam, Hassan Mneimneh and Patrick Pierce,<sup>104</sup> which addresses the importance of records in any mechanism of transitional justice and provides a discussion about how to collect, analyze, manage and preserve this documentation.

Another important organization is the Center for Justice & Accountability, based in San Francisco and founded in 1998. The Center focuses its work in the legal aspects of transitional justice and human rights. It uses litigations to achieve accountability for perpetrators of human rights violations. The Center is based on the principle of universal jurisdiction. This organization

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<sup>102</sup> Schedler, “¿Qué es la Rendición de Cuentas?,” 21.

<sup>103</sup> International Center for Transitional Justice, “Mission and History,” <http://www.ictj.org/en/about/mission/> (Accessed March 18, 2010)

<sup>104</sup> Louis Bickford et al., “Documenting Truth” (International Center for Transitional Justice, 2009).



has provided legal representation to plaintiffs from a wide variety of countries, including the trial of Col. Carranza in Memphis and the Guatemala Genocide case in Spain.

Transitional justice has also included the creation of special courts that investigate a particular event of repression. Two well-known examples are the International Criminal Tribunal for the former Yugoslavia and the International Criminal Tribunal for Rwanda. Nevertheless, these tribunals have not been exempt of criticism, particularly because of their limited results bringing the responsible to justice.<sup>105</sup>

### **2.3 ARCHIVES, ACCOUNTABILITY AND TRANSITIONAL JUSTICE IN LATIN AMERICA**

In 1979, Brazil's military regime granted access to its archive to a selected group of lawyers. These lawyers were allowed to borrow files from the archive for 24 hours. For some of these lawyers this was the opportunity to compile and make public the human rights violations committed by the dictatorship during the fifteen-year dictatorship. With the help of Jaime Wright, member of the Presbyterian Church in Brazil, the Catholic archdiocese of São Paulo, and members of the World Council of Churches, the lawyers outlined a secret plan to photocopy the

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<sup>105</sup> See Jelena Subotic, "The Paradox of International Justice Compliance," *The International Journal of Transitional Justice* 3, no. 3 (November 2009): 362-383., and Jeremy Rabkin, "No Substitute for Sovereignty: Why International Criminal Justice Has a Bleak Future – and Deserves It," in Hughes, Schabas, and Thakur, *Atrocities and International Accountability: Beyond Transitional Justice.*, ed. Edel Hughes, William A. Schabas and Ramesh Thakur (New York: United Nations University Press, 2007): 98-132.

records of the military. Three years after successfully implementing the plan, the group published the report *Brasil: Nunca Mais* (Brazil, Never Again).<sup>106</sup>

In Latin America, the years of repression, dictatorships, and internal wars left an extraordinarily vast documentary evidence of human rights violations. The discovery by Martín Almada and Judge José Agustín Fernández of the *Archivo del Terror* (Archive of Terror) in Paraguay in 1992,<sup>107</sup> and the archives of the Guatemalan National Police in 2005 by representatives of the Human Rights Ombudsman<sup>108</sup> are two examples that show the detailed recordkeeping practices of the repressive regimes, a practice that came back to hunt them eventually. These archives have not only served for the purposes of historical research and discovery of hidden truths, but also for mechanisms of legal accountability. Almada, a political prisoner during the dictatorship of Alfredo Stroessner in Paraguay, shared information from the Archives of Terror with Judge Baltazar Gazón during his criminal investigation against General Augusto Pinochet.<sup>109</sup> In Guatemala, the archives of the National Police led to the arrest of two officials in the case of the disappearance of Edgar Fernando García, a student leader captured in 1984.<sup>110</sup>

Not only hidden archives have been discovered. Thousands of secret documents about U.S. foreign policy towards Latin America have been declassified, proving to be critical evidence in a number of human rights trials and other investigations. The National Security

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<sup>106</sup> For the story of the Never Again report, see Lawrence Weschler, *A Miracle, A Universe: Settling Accounts with Torturers* (New York: Pantheon Books, 1990).

<sup>107</sup> On the Archive of Terror see Samuel Blixen, *El Vientre del Cóndor: Del Archivo del Terror al Caso Berríos*, 3rd ed. (Montevideo, Uruguay: Ediciones de Brecha, 2000).

<sup>108</sup> Kate Doyle, "The Atrocity Files: Deciphering the Archives of Guatemala's Dirty War," *Harper's Magazine*, December 2007.

<sup>109</sup> Naomi Roht-Arriaza, *The Pinochet Effect: Transnational Justice in the Age of Human Rights* (Philadelphia: University of Pennsylvania Press, 2006), 30.

<sup>110</sup> "Historical Archives Lead to Arrest of Police Officers in Guatemalan Disappearance," National Security Archive Electronic Briefing Book No. 273, <http://www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB273/index.htm> (Accessed April 10, 2010)

Archive has been an important player providing access to these records. Countries in Latin America have also established declassification efforts of their own government and military archives. For instance, in 2009 Brazil's National Archive published the virtual archive *Memorias Reveladas* (Memories Revealed), making available secret documents from the military dictatorship.<sup>111</sup>

The following sections discuss the relevant literature that discusses relations between archives, accountability and transitional justice in Latin America. The bulk of this literature has not been written by archivists, suggesting the need for more research, particularly in the relationship between archives and transitional justice.

### **2.3.1 Archives and accountability**

Jane Parkinson's Master's thesis "Accountability in Archival Science" (1993) places accountability in the historical context of the developments of archival theory in the twentieth century, and particularly within public administration. Parkinson explains that even though classic works such as the Dutch manual and the writings of Sir Hilary Jenkinson do not directly name the word accountability, aspects of the concept can be recognized from the principles discussed by them. One example, Parkinson explains, is Jenkinson's assertion of the importance of records as evidence.<sup>112</sup> In the United States, Margaret Cross Norton and T. R. Schellenberg were the main early voices connecting archives to notions of accountability. Norton, whose ideas about archives were highly influenced by Jenkinson's *Manual of Archive Administration*,

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<sup>111</sup> Ingrid Bachmann, "Brazil Puts Files from Military Dictatorship Online," Blog, *Journalism in the Americas: A News Blog*, May 5, 2009, <http://knightcenter.utexas.edu/blog/?q=en/node/4039>.

<sup>112</sup> Jane Parkinson, "Accountability in Archival Theory" (Master of Archival Studies thesis, University of British Columbia, 1993), 35-36.

stressed the significance of records as evidence in the context of democratic governments.<sup>113</sup> Likewise, Schellenberg underscores the importance of the preservation and access to public records in holding government officials accountable for their actions.<sup>114</sup>

Parkinson's discussion puts into perspective how the relation between archives and accountability was rooted on the positivist view of archives. Not only is emphasis given to the importance of records as evidence, but also of the argument that archives are unbiased. This argument has been disputed with the advent of postmodern archival theory since the 1990s. This challenge includes the concept of accountability. John M. Dirks explains that postmodern archival literature "have countered that the emphasis on accountability has been too bureaucratic and presentist, and that it detracts from the long-term goals of memory, narrative, and heritage, goals which archives also must serve."<sup>115</sup> Heather MacNeil, on the other hand, takes on the view of postmodern theory applied to the truthfulness of records, to remind archivists "that methods for assessing the truth-value of records as evidence are rooted in a particular way of looking at the world and in a particular conception of records as a kind of testimony about that world."<sup>116</sup> This does not mean, MacNeil explains, that archivists should dismiss standards to examine the reliability of records. Developing these standards is important, but it should be taken into account that they are shaped by historical and cultural contexts. "The narrative archivists have constructed around the concepts of reliability and authenticity is only one among many narratives," MacNeil asserts.<sup>117</sup> The study of the archival implications of accountability for

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<sup>113</sup> Parkinson, "Accountability in Archival Theory," 39-40.

<sup>114</sup> Parkinson, "Accountability in Archival Theory," 46-54.

<sup>115</sup> John M. Dirks, "Accountability, History, and Archives: Conflicting Priorities or Synthesized Strands?," *Archivaria* 57 (Spring 2004): 30.

<sup>116</sup> Heather MacNeil, "Trusting Records in a Postmodern World," *Archivaria* 51 (Spring 2001): 45.

<sup>117</sup> MacNeil, "Trusting Records in a Postmodern World," 46.

human rights abuses has also influenced this shift from a positivist view of archives and accountability. In the words of Livia Iacovino,

Human rights violations, as evidenced in the record or in the failure to document what happened, have led to a more political reading of the role of archives and archivists in redressing the abuse of record subjects by government and in some instances in allowing a right of reply through the record.<sup>118</sup>

It is worth noticing Parkinson's discussion about the scholarship in the 1960s up to the 1980s. During that period, scandals from public officials and the implementation of the Freedom of Information Act prompted discussions about archivists' social responsibility.<sup>119</sup> In 1972, historian Howard Zinn warned that archival practices traditionally served the most powerful and called for an approach in which archivists should document the less powerful. "The archivist," Zinn explains, "tends to be scrupulous about his neutrality, and to see his job as a technical job, free from the nasty world of political interest." However, Zinn continues, the archivist's "supposed neutrality is... a fake."<sup>120</sup> Certainly words that more than thirty years later are expressed by Verne Harris' discourse about "the other" and the postmodern ideas led by Terry Cook. Similarly, F. Gerald Ham, in his presidential address at the 1974 Society of American Archivists annual meeting talked against a passive role of the archivist, and stating that, "the archivist must realize that he can no longer abdicate his role in this demanding intellectual process of documenting culture."<sup>121</sup> Words that were similarly expressed by Timothy Ericson's SAA presidential address in 2004, where he talked against the increasing government secrecy and the need of archivist to stand up for open government.

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<sup>118</sup> Livia Iacovino, "Archives as Arsenals of Accountability," in Terry Eastwood and Heather MacNeil, eds., *Currents of Archival Thinking* (Santa Barbara, California: Libraries Unlimited, 2010), 184-185.

<sup>119</sup> Parkinson, "Accountability in Archival Theory," 77.

<sup>120</sup> Howard Zinn, "Secrecy, Archives and the Public Interest," *Midwestern Archivist* 2 (1977): 14-27.

<sup>121</sup> F. Gerald Ham, "The Archival Edge," *American Archivist* 38, no. 1 (5-13): 13.

It is interesting to see that the debates about archives and accountability during that period are, in a more or less degree, the same issues discussed in contemporary archival literature about accountability. These include the writings of Richard J. Cox about leadership at the U.S. National Archives, the reclassification scandal, and presidential libraries, and Harris's and David Wallace's arguments about archives and justice. They reach a similar conclusion: archivists should embrace a more active role. This is, I believe, the main lesson archivists should learn from the relation between archives and accountability.

Australian archivists have been a leading voice in the study of the relation between records and accountability. In the 1980s, a series of scandals of government and corporate corruption in Australia raised questions about how poor recordkeeping affects accountability, issues that were addressed in *Archival Documents: Providing Accountability Through Recordkeeping* (1993). This collection of essays, edited by Sue McKemish and Frank Upward, is built from their aspiration to explore the relation between recordkeeping and government accountability and draws from Terry Eastwood's argument of understanding archives as "arsenals of democratic accountability and continuity."<sup>122</sup>

Eastwood builds from the historical developments of archives in Canada and Australia to explain a framework that conceptualizes archives from three main ideas: archives as arsenals of history, archives as arsenals of administration, and archives as arsenals of law. This in turn can be encompassed into one main view of archives as arsenals of democratic accountability and continuity. According to Eastwood, "It is the archivist's task to spirit an understanding of the idea of archives as arsenals of democratic accountability and continuity into society and into its

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<sup>122</sup> This idea was addressed by Eastwood at the 7<sup>th</sup> Biennial Conference of the Australian Society of Archives on June 1989. See Terence M Eastwood, "Reflections on the Development of Archives in Canada and Australia," in Sue McKemish and Frank Upward, eds., *Archival Documents: Providing Accountability Through Recordkeeping* (Melbourne: Ancora Press, 1993), 27–39.

very corporate and social fabric.”<sup>123</sup> This argument is built from Eastwood’s strong belief that archives are a representation of society and that its developments are closely related to political, social and cultural realities. Furthermore, modern challenges make it imperative for archivists to become active participants in society. “As they overcome old stereotypes, the task of the modern archivist seems to be to avoid becoming an obscure functionary who appears to be doing things of no great moment or meaning beyond the limited realm of his or her immediate endeavor,” Eastwood states.<sup>124</sup> McKemmish underscores how the exponential growth of electronic information, along with the aforementioned corruption crises in Australia, presents fundamental changes to the field of archives and records management. After examining a number of accountability crises in Australia, McKemmish concludes that a fundamental reason for these scandals was poor recordkeeping and the lack of a strong concept of archival documents. This is a major impediment to embracing Eastwood’s notion of archives as arsenals of democratic accountability.

Postmodern theory applied to archives has been key for the discourses about the role of archivists and the archival mission. It has brought into the discussion issues of power and control, and has driven a conceptualization of archives away from the neutral, objective and static discourse. Rather, archives are viewed as sites of contestation, affected by social, cultural and political circumstances.<sup>125</sup> Within this context the topic of accountability has been one of the

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<sup>123</sup> Eastwood, “Reflections,” 36.

<sup>124</sup> Eastwood, “Reflections,” 38.

<sup>125</sup> A sample of works covering this topics include: Francis X. Blouin Jr. and William G. Rosenberg, eds., *Archives, Documentation and Institutions of Social Memory: Essays from the Sawyer Seminar*. (Ann Arbor, MI: The University of Michigan Press, 2007); Brien Brothman, “Declining Derrida: Integrity, Tensegrity, and the Preservation of Archives from Deconstruction,” *Archivaria* 48 (Fall 1999): 64-88; Rodney G.S. Carter, “Of Things Said and Unsaid: Power, Archival Silences, and Power in Silence,” *Archivaria* 61 (Spring 2006); Terry Cook, “Archival Science and Postmodernism: New Formulations for Old Concepts,” *Archival Science* 1 (2001): 3-24; Terry Cook, “Fashionable Nonsense or Professional Rebirth: Postmodernism and the Practice of Archives,” *Archivaria* 51 (Spring 2001): 14-35; Terry Cook and Joan M. Schwartz, “Archives, Records, and Power: From

driving forces around the discourse about the role of archivists and the archival mission. Even when some of the literature about archives and accountability is not directly related to postmodern theory, it is important to recognize that both areas have experienced an important increment during practically the same period of time. Still, archival scholarship about accountability that examines the role of archivists in society reflects the very same discussions about archives and power in the postmodern archives literature.

Cox and Wallace *Archives and the Public Good: Accountability and Records in Modern Society* draws from the editors' conviction that records are essential sources of accountability. Furthermore, records can affect both positively and negatively accountability.<sup>126</sup> The case studies included cover important themes such as secrecy, memory and ethics. The essays, as Cox and Wallace highlight, are built not just by the knowledge of the contributors but even from their direct experience. This underscores that even further than understanding the importance of records to serve accountability, archivists get also directly involved in issues that go beyond day-to-day archival practices.

From the collection of essays in the volume, Verne Harris' and David A. Wallace's contributions are of particular interest for this dissertation. Harris places the massive destruction of records by the apartheid regime during its final years as a blunt attempt to erase the memory of a contentious past. This affected the work of the South African Truth and Reconciliation Commission. "In seeking to reconstruct and understand the past, so many pieces of that past's

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(Postmodern) Theory to (Archival) Performance," *Archival Science* 2, no. 3-4 (September 2002): 171-185; Joan M. Schwartz, "Archives, Records, and Power: The Making of Modern Memory," *Archival Science* 2, no. 1-2 (March 2002): 1-19; Verne Harris, *Archives and Justice: A South African Perspective* (Chicago: Society of American Archivists, 2006); Carolyn et al. Hamilton, *Refiguring the Archive* (Dordrecht: Kluwer Academic, 2002).

<sup>126</sup> Richard J. Cox and David A. Wallace, eds., *Archives and the Public Good: Accountability and Records in Modern Society* (Westport, CT: Quorum Books, 2002), 3.



puzzle were missing,” Harris states.<sup>127</sup> But destruction and concealment of records is not an exclusive practice of authoritarian regimes. Government secrecy under democratic administrations similarly affects accountability, and Wallace’s discussion of the Iran Contra scandal accentuates it. While this case shows the importance of access to information for the purposes of government and historical accountability, the attempts by government officials to destroy and conceal evidence of this covert operation show the uphill battle to achieve this goal. “The investigations and the voluminous testimony and documentary evidence provide ample verification that democratic government accountability is deeply contested,” Wallace concludes.<sup>128</sup>

One area that has been discussed by a few is accountability for the work of archivists. What are the mechanisms for assessing the responsibilities of archivists? Perhaps the stronger words come from Chris Hurley’s “Archivists and Accountability.” Hurley discusses the issues related to holding archivists accountable for their decisions and actions. He explains,

Confusion and uncertainty exist over the role of the archivist. There is ambiguity over which role or roles (if any) archivists are actually assigned. Comfortable and self-serving claims are made that archives programs support accountability, but all too often these claims disappear into a fog of ambiguity and obfuscation when concrete action is required to remedy specific lapses. Benchmarks to measure and evaluate performance as agents of accountability are lacking. There is also a lack of correctives to remedy identified shortcomings in their performance.<sup>129</sup>

Hurley draws from the response of the Australian Society of Archivists to the Heiner Affair to raise concerns about archivists’ lack of accountability for their own work. He criticizes the lack of recordkeeping standards and benchmarks that would guide archivists to make

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<sup>127</sup> Verne Harris, ““They Should Have Destroyed More”: The Destruction of Public Records by the South African State in the Final Years of Apartheid, 1990-1994,” in Harris, *Archives and Justice: A South African Perspective*, 223.

<sup>128</sup> David A. Wallace, “Implausible Deniability: The Politics of Documents in the Iran-Contra Affair and Its Investigations,” in *Archives and the Public Good*, 111.

<sup>129</sup> Chris Hurley, “Archivists and Accountability,” *Archives & Manuscripts* 34, no. 2 (November 2006): 85.

appraisal decisions. Beyond responding to the errors of the archivists in one particular event, Hurley argues, archivists should look further to establishing a better understanding of the profession's accountability. "Archivists can't credibly act as agents of accountability unless we really make amends," Hurley concludes.<sup>130</sup> Hurley also discusses these issues in "The Role of the Archives in Protecting the Record from Political Pressure."<sup>131</sup>

While Hurley focuses on the use of benchmarks, Richard Cox ties accountability and the responsibilities of archivists to ethics. Furthermore, Cox raises the ethical challenge of whistleblowing. In cases of government secrecy or corporate abuses, for examples, does the archivist has an ethical mandate to act? Cox rightly states that archivists and records managers "have access to more evidence of wrongdoing than any other group," and begs the question, "So, why have records professionals not addressed this issue?"<sup>132</sup> Weak codes of ethics and archivists' wrong perception that they don't have the power to influence social or political issues are mainly blamed for this lack of involvement.

In the context of human rights, archivists stress issues of access, historical accountability, and memory. Eric Ketelaar, Emeritus Professor at the University of Amsterdam, uses the cases of security files from former Communist regimes in Eastern and Central Europe and principles outlined in a report from the United Nations Commission on Human Rights to discuss the importance of the right to know in a democratic society and for the respect of human rights.<sup>133</sup> James O'Toole's proposal for a moral theology of archives looks at the role of records in the

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<sup>130</sup> Hurley, "Archivists and Accountability," 107.

<sup>131</sup> Chris Hurley, "The Role of the Archives in Protecting the Record from Political Pressure," in Margaret Procter, Michael Cook, and Caroline Williams, eds., *Political Pressure and the Archival Record* (Chicago: Society of American Archivists, 2005), 165.

<sup>132</sup> Cox, *Ethics, Accountability, and Recordkeeping in a Dangerous World*, xlvii.

<sup>133</sup> Eric Ketelaar, "Access: The Democratic Imperative," *Archives & Manuscripts* 34, no. 2 (November 2006): 62-81.

processes of historical accountability.<sup>134</sup> Bruce P. Montgomery identifies the main reasons why records of human rights investigations are important. Similar to O'Toole, Montgomery underscores that these records are critical for historical accountability. He also points to the value of these records for memory construction, and the use of these records as evidence during criminal investigations by courts such as the International Criminal Court.<sup>135</sup>

As stated above, Cox and Wallace recognize the need to further study the importance of records for accountability, a statement reinforced by Cox in *Ethics, Accountability and Recordkeeping in a Dangerous World*. Randall C. Jimerson adds his voice in his book *Archives Power: Memory, Accountability, and Social Justice* (2009). Jimerson draws from the scholarship about the “Archive,” memory, and power to discuss the role of archivists in their own institutions and in society at large. Following archival thinkers who embrace postmodern theory, Jimerson builds his discussion from the understanding of archivists “as active agents in the process of shaping our knowledge of the past,”<sup>136</sup> and the recognition “that archives are – and always have been – sites of important power relationships within society.”<sup>137</sup> His discussion of memory, accountability and justice is based on an analysis of George Orwell’s *1984* and *Animal Farm*, the South African experience post-apartheid, diversity and ethics. This exploration reinforces the fact that archives are important for society, and for struggles dealing with justice, accountability and memory.

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<sup>134</sup> James O'Toole, “Archives and Historical Accountability: Toward a Moral Theology of Archives,” *Archivaria* 58 (2004): 3-19.

<sup>135</sup> Bruce P. Montgomery, “Fact-Finding by Human Rights Non-Governmental Organizations: Challenges, Strategies, and the Shaping of Archival Evidence,” *Archivaria* 58 (Fall 2004): 23.

<sup>136</sup> Randall C. Jimerson, *Archives Power: Memory, Accountability, and Social Justice* (Chicago: Society of American Archivists, 2009), 19.

<sup>137</sup> Jimerson, “Archives Power,” 20.

In this context, Jimerson's book is a good contribution to the archival scholarship. Yet, its content relies mainly in cases and issues already studied, rather than new scholarship. For example, his analysis of accountability is a review of the main books written by archivists.<sup>138</sup> Also the discussion of Orwell takes a significant portion of the book. Furthermore, the concepts of accountability and social justice are not clearly defined. In short, Jimerson offers an overview of the most important issues on memory, accountability and social justice discussed by archivists and non-archivists in recent scholarship.

There is a particular subject from Jimerson that relates to the general topic of this dissertation. His discussion about the South African experience underscores the importance of archives in processes of social reconciliation and accountability during processes of transition. In Jimerson words, "The archival record can thus foster the work of reconciliation, healing and social justice. The first step in this process is to remember the past in order to overcome oppression and to hold former leaders accountable for their action."<sup>139</sup> I agree with that statement. Yet, it is also important to discuss these issues understanding the limitations and challenges to reach goals of reconciliation, accountability and justice. As the next sections will show, these processes of so-called "reconciliation" are driven by negotiations by a few that usually limits the mechanisms that victims or their relatives can use to achieve justice.<sup>140</sup>

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<sup>138</sup> The books are: Cox and Wallace, *Archives and the Public Good: Accountability and Records in Modern Society*; Procter, Michael Cook, and Williams, *Political Pressure and the Archival Record*; Hamilton, *Refiguring the Archive*; Blouin Jr. and Rosenberg, *Archives, Documentation and Institutions of Social Memory: Essays from the Sawyer Seminar*; Harris, *Archives and Justice: A South African Perspective*.

<sup>139</sup> Jimerson, *Archives Power: Memory, Accountability, and Social Justice*, 239.

<sup>140</sup> Dr. Harvey Weinstein, professor at the University of California Berkeley School of Public Health and Associate Director of the Human Rights Center, presents a strong criticism to the notion of reconciliation. He contends that expecting reconciliation within a short period of time after the experiences of mass atrocities is unrealistic. See Harvey M. Weinstein, "Editorial Note: The Myth of Closure, the Illusion of Reconciliation: Final Thoughts on Five Years as Co-Editor-in-Chief," *International Journal of Transitional Justice* 5, no. 1 (March 2011): 1 -10.

### 2.3.2 Archives and transitional justice

In 2005, the United Nations Commission on Human Rights published the “Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity.”<sup>141</sup> This report, written by Diane Orentlicher, dedicates one section to preservation of archives and its access. Principle 14 states that, “The right to know implies that archives must be preserved.” It also calls for measures and sanctions to prevent disposition, concealment or falsification of the records. Principle 15 specifies that victims and their relatives should be awarded access to the materials. It also underscores that access for purposes of research should be facilitated but at the same time restrictions should be imposed to safeguard privacy of individuals. Even though these are just general principles, it shows that archives are essential players for the protection of human rights.

The significance of archives is also seen in the scholarly work about transitional justice and human rights. Ruti Teitel incorporates in her study of transitional justice important records-related issues. The work of truth commissions, for example, “suggest adherence to a principle of documentation,” and its reports “are not generalized accounts but detailed documentary records.”<sup>142</sup> Teitel also addresses the challenges of dealing with archives created by authoritarian regimes, and especially from Communist rule in Europe.<sup>143</sup> Using the cases of the Stasi files and the archives of repression in the Czech Republic, she concludes,

The long shadow of the totalitarian state histories can be seen in the region’s ongoing struggle with its legacy of inherited state archives. Whereas, after decades of repression, political change meant opening the ancien régime’s archives, opening the old state files

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<sup>141</sup> The report is available electronically at <http://www.derechos.org/nizkor/impu/principles.html> (Accessed March 29, 2010)

<sup>142</sup> Teitel, *Transitional Justice*, p. 82-83

<sup>143</sup> Teitel, *Transitional Justice*, p. 92-103

would not automatically bring about the open society... The ancien régime's archives have a profound symbolic force, recalling again the paradoxical ongoing legacy of totalitarianism: at the same time evoking that repressive rule and holding out the promise of a knowledge that is potentially transformative of the public sphere.<sup>144</sup>

Teitel also discusses criminal trials during transition as mechanisms to expose the historical record of human rights violations, using Nuremberg and the 1985 trials in Argentina as examples. In her own words, these kind of trials “are today largely remembered not for their condemnation of particular individuals but, rather, for their role in creating a lasting record of state tyranny.”<sup>145</sup> Chilean Judge Juan Guzmán Tapia, responsible for the two indictments in Chile against Gen. Pinochet, also makes reference in his memoir about creating a historical record of state atrocities during the Pinochet regime. Discussing the difficult experience of giving testimony by victims of torture and relatives of the disappeared, Judge Guzmán underscores, “I felt necessary that everything be told: to achieve justice, of course, but also so future generations learn what has been committed.”<sup>146</sup>

Neil Kritz also addresses issues related to records, and particularly from the aspect of setting the truth of the repressive past. While stating that, “In all cases of transition from a repressive regime, history has been controversial,” Kritz nevertheless reaffirms that “Establishing a full, official accounting of the past is increasingly seen as an important element to a successful democratic transition.”<sup>147</sup> Zalaquett expanded this line of reasoning, specifying that one of the conditions for the legitimacy of a transition is that the truth must be known.

The important thing is that the truth is established in an officially sanctioned way, in a manner that allows the findings to form part of the historical record of the nation and that

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<sup>144</sup> Teitel, *Transitional Justice*, p. 100

<sup>145</sup> Teitel, *Transitional Justice*, 73.

<sup>146</sup> Juan Guzmán, *En el Borde del Mundo: Memorias del Juez que Procesó a Pinochet* (Barcelona: Editorial Anagrama, 2005), 215.

<sup>147</sup> Neil J. Kritz, “The Dilemmas of Transitional Justice,” in Kritz, *Transitional Justice: How Emerging Democracies Reckon with Former Regimes*, xxvi.

establishes an authoritative version of the events, over and above partisan considerations.<sup>148</sup>

The work of truth commissions is an excellent example. The important task of these commissions of inquiry to establish a full account of the past involves extensive recordkeeping and record creating responsibilities. Not only members of the commissions seek access to government documents and other non-government archives, but the commission also creates their own records, documenting testimonies, investigations and findings.<sup>149</sup>

Priscilla Hayner, in her book *Unspeakable Truths: Confronting State Terror and Atrocity* (2001), takes up records and archival issues that may affect the work of truth commissions. She stresses that outside factors significantly affect the investigatory process, and mentions as part of the examples access to government records and information from non-governmental organizations.<sup>150</sup> Hayner makes reference to various cases to exemplify the difficulties truth commissions encountered while trying to gain access to government records. Regularly the main response from the military and other government branches was that information was not available. Also in various cases, like South Africa, there was a systematic destruction of government records.<sup>151</sup> Paradoxically, declassified records from the U.S. government became important sources for a number of truth commissions in Latin America. Moreover, Hayner recognizes the role of the National Security Archive obtaining declassified documents and

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<sup>148</sup> José Zalaquett, "Confronting Human Rights Violations Committed by Former Governments," in *Transitional Justice: How Emerging Democracies Reckon with Former Regimes*, 7.

<sup>149</sup> For an analysis of truth commissions from an archival perspective see Joel A Blanco-Rivera, "Truth Commissions and the Construction of Collective Memory: The Chile Experience," in Jeanette A. Bastian and Ben Alexander, eds., *Community Archives: The Shaping of Memory* (London: Facet Publishing, 2009), 133-147., and Elizabeth Nannelli, "Memory, Records, History: The Records of the Commission for Reception, Truth, and Reconciliation in Timor-Leste," *Archival Science* 9, no. 1-2 (June 2009): 29-41.

<sup>150</sup> Priscilla B. Hayner, *Unspeakable Truths: Confronting State Terror and Atrocity* (New York: Routledge, 2001), 234.

<sup>151</sup> Hayner, *Unspeakable Truths*, 239-240.

providing information to the truth commissions of El Salvador and more extensively to Guatemala.<sup>152</sup>

This mass declassification of U.S. documents, and of records from other countries, has opened the doors for a rich historical research. The collection of essays *In From the Cold: Latin America's New Encounter with the Cold War* (2008) provides a new approach to the study of the effects of the Cold War in the region. One of the main reasons for this new approach is the availability of U.S. declassified records and from archives in Latin America. Historian Daniela Spencer, in the book's concluding essay, offers a strong recognition of the importance of archives not only for the study of the Cold War but even more important for accountability and justice.

... we recognize that the declassification of documents under pressure from civil society in both Latin America and the United States has had an enormous impact on the shift of power inside the countries concerned. Declassification has helped to bring assassins to justice, advanced accountability for human rights abuses, restored memories of the ravaged past, and thus brought back to Latin America histories that had been denied by secrecy. The ongoing recovery of archives and memory in Latin America has made possible new departures for a truly global understanding of Cold War history. The declassification of new documents has also been an eminently democratic process, since many of the formerly secret findings have been digitized and are now accessible on the Internet.<sup>153</sup>

Thomas S. Blanton, director of the National Security Archive, reaches a similar conclusion. Blanton provides an excellent account of how the recently available documentation have been important not only for scholarly research about the Cold War in Latin America, but perhaps most importantly, for memory construction, historical justice efforts, and accountability. In the essay "Recovering the Memory of the Cold War: Forensic History and Latin America,"

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<sup>152</sup> Hayner, *Unspeakable Truths*, 240-243.

<sup>153</sup> Daniela Spencer, "Standing Conventional Cold War History on Its Head," in Gilbert M. Joseph and Daniela Spencer, eds., *In from the Cold: Latin America's New Encounter with the Cold War*. (Durham: Duke University Press, 2008), 383.



Blanton describes a number of cases related to discovery of archives, declassification of U.S. government records and initiatives to built human rights archives by groups in Latin America. This availability of archives has influenced mechanisms like truth commissions and human rights trials, and contributed to the initiatives to preserve the memory of this past. In Blanton's words, "the ongoing recovery of archives and memory in Latin America makes possible new landmarks in the universal jurisdiction of history," and therefore, "Cold War history can perhaps learn the most from Latin Americans, their truth commissions, their exhumations, and their resurrected files."<sup>154</sup>

It was not until almost 30 years after Gen. Augusto Pinochet gained power in Chile that the general public and relatives of victims of the regime were able to gain access to the vast collection of records documenting the role of the U.S. government supporting the Pinochet dictatorship. In 1999 the Clinton administration started to release documents about Chile, eventually totaling more than 24,000. Peter Kornbluh,<sup>155</sup> Senior Analyst at the National Security Archive, presents the most complete description of the role of the U.S. government in Pinochet's Chile. In addition to describing events that took place during the Pinochet regime and the US involvement, the book also reproduces a good number of the declassified documents. The declassified records are not only evidence that the US Government accepted the Pinochet government as legitimate, but these records demonstrate that the U.S. government supported economically, militarily and with intelligence the coup and the regime during their worst years of human rights violations.

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<sup>154</sup> Blanton, "Recovering the Memory of the Cold War: Forensic History and Latin America," 68.

<sup>155</sup> Peter Kornbluh, *The Pinochet File: A Declassified Dossier on Atrocity and Accountability* (New York: The New Press, 2003).

Other scholars have published important books with findings supported by declassified records. Journalist John Dinges extensively used declassified U.S. documents and records from the Archive of Terror in Paraguay for his book *The Condor Years: How Pinochet and His Allies Brought Terrorism to Three Continents* (2004). Even though he warns that the records do not always provide completely accurate information, he nevertheless recognizes that these documents are “a reliable roadmap of what the intelligence officials and their superiors believed at the time to be an accurate version of the facts.”<sup>156</sup> Similarly, Victoria Sanford’s *Buried Secrets: Truth and Human Rights in Guatemala* (2003) includes an analysis of declassified records from the CIA and the State Department to discuss her argument that the Guatemalan government knowingly committed acts of genocide against the Mayan communities.<sup>157</sup> And anthropologist Leigh Binford, in her book about the worst massacre during the twelve-year civil war in El Salvador, acknowledges the National Security Archive for making available important declassified records about the event.<sup>158</sup>

The literature also acknowledges the importance of records in processes of memory construction. The topic of memory and trauma has been one of the main areas of study in the context of transitional justice. Sociologist Jeffrey K. Olick states that, “the term *collective memory* has become a powerful symbol of the many political and social transitions currently under way.”<sup>159</sup> Argentine sociologist Elizabeth Jelin highlights the connection between power and memory struggles during and after periods of political repression. During dictatorships, the

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<sup>156</sup> John Dinges, *The Condor Years: How Pinochet and His Allies Brought Terrorism to Three Continents* (New York: The New Press, 2004), xii.

<sup>157</sup> Victoria Sanford, *Buried Secrets: Truth and Human Rights in Guatemala* (New York: Palgrave Macmillan, 2003), 147-179.

<sup>158</sup> Leigh Binford, *The El Mozote Massacre: Anthropology and Human Rights* (Tucson: University of Arizona Press, 1996).

<sup>159</sup> Jeffrey K. Olick, *The Politics of Regret: On Collective Memory and Historical Responsibility* (New York: Routledge, 2007), 17.

memories of the oppressed are silenced, while the rulers construct and impose their own memory, or ‘official history.’ After the end of these dictatorships, there’s a new opening where the silenced memories become part of the social struggles to confront the past and seek justice.<sup>160</sup> The opening of archives is an important part of these social struggles. The collection of essays *Los Archivos de la Represión: Documentos, Memoria y Verdad* (2002), edited by Jelin and Ludmila da Silva Catela, presents a series of cases from countries such as Brazil, Paraguay and Chile to discuss how archives become important part of the processes of memory construction during the transitions.

Jelin also discusses archives of repression in her essay “Public Memorialization in Perspective: Truth, Justice and Memory of Past Repression in the Southern Cone of South America.” She identifies archives and the preservation of documents as one of the main areas of struggle in the process of settling accounts with the past. Jelin builds from the conception that “the significance of archives goes beyond the instrumental use of documents” to explain that decisions on the selection and preservation of documents are marked by those who have the power to do so. Therefore, “archives are not the depository of dead papers and traces of the past, but rather lively arena of social and political dispute.”<sup>161</sup> She then explains three types of archives that evolve during the periods of repression and transitions: the records created by the dictatorship, the documentation gathered by human rights organizations, and other types of archives documenting life under the dictatorship (i.e. oral history projects and testimonial archives).

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<sup>160</sup> Elizabeth Jelin, *State Repression and the Labors of Memory* (Minneapolis: University of Minnesota Press, 2003).

<sup>161</sup> Elizabeth Jelin, “Public Memorialization in Perspective: Truth, Justice and Memory of Past Repression in the Southern Cone of South America,” *The International Journal of Transitional Justice* 1, no. 1 (March 2007): 152.

Publications that directly focus on records and recordkeeping issues include the report from the Documentation Affinity Group (DAG) titled “Documenting Truth.” Published by the International Center for Transitional Justice, this report discusses best practices for human rights documentation projects. It is built by the work of six nongovernmental organizations,<sup>162</sup> and provides reflections on best practices for areas such as data gathering, analysis, records management and preservation. The report makes clear the importance of records in the struggle against impunity,

Documentary evidence is at the heart not only of legal cases against perpetrators of human rights abuse, but also of victims’ efforts to create and accurate historical record and thereby establish the truth about the repressive past. Documentary evidence is required to determine who will be recipients of reparations in post-authoritarian or post-conflict contexts.<sup>163</sup>

The report also makes clear the main goal of these non-governmental organizations: tell the story. The organizations aim to convey an accurate testimony of the past regardless of the venue (truth commissions, the media, the courtroom), and documents prove of been of important assistance. The report, then, describes four important components of the process of story telling: 1) testimony and voice, 2) official records, 3) unofficial records and physical materials, and 4) analysis and other created documents.

Louis Bickford, one of the authors of “Documenting Truth,” has written additional essays covering archival implications of human rights and transitional justice. In “The Archival Imperative: Human Rights and Historical Memory in Latin America’s Southern Cone,” Bickford offers a description of human rights archives in the Southern Cone and argues that human rights

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<sup>162</sup> The members of DAG are: Documentation Center of Cambodia, the Forensic Anthropology Foundation of Guatemala, the Human Rights Education Institute of Burma, the Humanitarian Law Center, the International Center for Transitional Justice, and the Iraq Memory Foundation.

<sup>163</sup> Bickford et al., “Documenting Truth,” 3.

groups and other institutions needs to make the preservation of these materials a priority.<sup>164</sup> And in his examination of initiatives of truth telling by NGOs, Bickford explains that documentation projects from these organizations can be precursors of official transitional justice mechanisms like truth commissions and criminal prosecutions.

Archivists have also gathered to discuss archives in the human rights context. In January 1994, the International Council of Archives reached a collaboration agreement with UNESCO creating an Experts Group on the Management of the State Security Archives in the Former Repressive Regimes. Among its objectives, the Experts Group would prepare guidelines on the preservation and management of records of repressive regimes. Archivist Antonio Gonzalez Quintana, from Spain, was named the Project Director, and the group released its report in 1997. The report contains recommendations on archival aspects like appraisal, description, and archival administration.

Regarding the important role of archives in the transition to democracy, the report emphasizes the importance of the records as evidence to be used for compensations to victims, and to remove those responsible of repression. The report states,

In the process of political transition, archives are an essential means of enforcing collective and individual rights. The success of methods of reparation and compensation of victims of repression, as well as the removal of those responsible in the former regime, will be to a great extent conditioned by the use of the documents of repressive institutions. Support for

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<sup>164</sup> Also see Louis Bickford, "Human Rights Archives and Research on Historical Memory: Argentina, Chile, and Uruguay," *Latin American Research Review* 35, no. 2 (2000): 160-182.

their preservation and the creation of institutions with responsibility for their custody in the new political state are determining factors in the process of consolidating democracy.<sup>165</sup>

Twelve years later, González Quintana published “Políticas Archivísticas para la Defensa de los Derechos Humanos,” an update of the first report. The report shows the close relationship between archives and two important aspects related to transitions from repressive regimes: memory and justice. The work of truth commissions, and from non-governmental organizations and groups of citizens like *Memento* in Estonia, *Todos los Nombres* in Spain and *Memoria Abierta* in Argentina have played an important role to rescue and preserve the memory of these traumatic periods and its documentation. Similarly, the transnational trials taking place after the arrest of Augusto Pinochet in London in 1998 prove evidence of the importance of archives and records as evidence. The report also demonstrates that even though there are important principles that can be implemented in policies for the management of records of repressive regimes, each case is affected by the particularities of each country. This line of reasoning follows on the arguments discussed above from scholars like Teitel, Zalaquett and Méndez.

Verne Harris’s deconstruction of the archive is built both from discourses by philosophers such as Jacques Derrida and Emmanuel Levinas, and from his experience during South Africa’s apartheid and the transition to democracy. This transition included the creation of the South African Truth and Reconciliation Commission (TRC), in which Harris was involved. This experience and knowledge are strongly present in his writings, in which he not only challenges the traditional and positivists notions of archives, but also advocates an approach to archival theory and practice based on justice.

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<sup>165</sup> Antonio Gonzalez-Quintana, *Archives of the Security Services of Former Repressive Regimes*, Report prepared for UNESCO on behalf of the International Council of Archives, 1997, 9.

Harris' writings that deal directly with issues related to the TRC cover three important themes: 1) archives and justice, 2) records destruction and accountability, and 3) archives and memory. In his essay "Archives, Politics, and Justice," Harris lays down what is perhaps his main philosophical framework about archives, based on two main arguments. First, Harris makes the case that, "politics is archival; that the archive is the very possibility of politics."<sup>166</sup> This argument is framed through the relation between political power and control of information. It is within the context of this control where the archive is constructed. This relation of power and archives, in turn, leads to Harris' second argument, which is "to make the case for an approach to archival work defined by the phrase "archives and justice.""<sup>167</sup>

Other archivists have engaged in discussions related to archives and transitional justice. Trudy Huskamp Peterson provides the only book currently published that focuses on truth commissions.<sup>168</sup> The book discusses the main questions to consider after the final disposition of the records of the commission. It also presents a general survey from twenty truth commissions and what happened to the records after they ceased to function. But as the title itself suggest, this book is just a guide. It basically points in a very general form the considerations for the management of these records. Absent is a deeper analysis of access, privacy and individual rights. Cox, in his introduction to *Ethics, Accountability, and Recordkeeping in a Dangerous World*, places the archives of truth commissions within the realm of ethics and accountability, pointing to their function of confronting the past and establishing a detailed historical record of a traumatic period.<sup>169</sup> Still, these discussions are just examples of a broader conceptualization of

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<sup>166</sup> Verne Harris, "Archives, Politics, and Justice," in *Political Pressure and the Archival Record*, 175.

<sup>167</sup> Harris, "Archives, Politics, and Justice," 173.

<sup>168</sup> Trudy Huskamp Peterson, *Final Acts: A Guide to Preserving the Records of Truth Commissions* (Washington, D.C.: Woodrow Wilson Center, 2005).

<sup>169</sup> Cox, *Ethics, Accountability, and Recordkeeping in a Dangerous World*, xxxix.

archives and accountability, and are not specifically driven to analyze transitional justice. Furthermore, the focus is on truth commissions, leaving aside other important mechanisms, and particularly criminal procedures.

Wallace does address some legal aspects related to transitional justice in a column published at the *Huffington Post*. Discussing the discovery of hidden archives in Latin America, and specifically in Brazil, Chile, Guatemala and Paraguay, Wallace explains their impact to confront amnesty laws and impunity. These archives, Wallace states, “may serve to give justice a second chance.”<sup>170</sup> He also makes reference to these cases in the essay “Historical & Contemporary Justice and the Role of Archivists,” in which he underlines his criticism to the view of archivists as neutral and unbiased, and calls for discussions that consider closely how archival practices and the record are shaped by politics and power.<sup>171</sup>

Following the line of Harris, Wallace and other archival thinkers that view the archive as a place of contestation, Eric Ketelaar’s “A Living Archive, Shared by Communities of Records,” discusses the archives of the United Nations International Criminal Tribunal for the former Yugoslavia. Ketelaar touches upon topics discussed in the transitional justice literature such as the use of criminal trials to construct a historical record of the past and archives as spaces of memory and healing. He concludes that the ICTY archive “will be a living archive for the causes

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<sup>170</sup> David A. Wallace, “Hidden Latin American Archives Support Push for Justice,” *The Huffington Post*, June 26, 2006, [http://www.huffingtonpost.com/david-wallace/hidden-latin-american-arc\\_b\\_23808.html](http://www.huffingtonpost.com/david-wallace/hidden-latin-american-arc_b_23808.html). (Accessed April 5, 2010)

<sup>171</sup> David A. Wallace, “Historical & Contemporary Justice and the Role of Archivists” (presented at the Memory for Justice Colloquium, Nelson Mandela Foundation, Johannesburg, South Africa, August 18, 2005), <http://www.abm-utvikling.no/publisert/abm-skrift/abm-skrift-fulltekst/abm-skrift-28-arkiv-demokrati-og-rettferd.html#2-historical-contemporary-justice>. (Accessed April 5, 2010)



of truths, histories and memories,” and “because it will continue to be challenged, contested and expanded.”<sup>172</sup>

Michelle Caswell, in "Khmer Rouge Archives: Accountability, Truth, and Memory in Cambodia," examines the efforts in Cambodia and internationally to hold the Khmer Rouge regime accountable of their human rights violations and how archives have been important during these processes. The preservation of these archives, Caswell explains, has affected accountability, truth-seeking and social memory. The Documentation Center of Cambodia, DC-Cam, has been a significant player in these three areas. DC-Cam has taken the role of assuring the preservation of documents about the Khmer Rouge regime, and it has established important initiatives to foster historical accountability and the construction of the memory of this period.

In terms of criminal accountability, documentary evidence was essential during the trial of Kaing Guek Eav (commonly known as Duch). He ran the Tuoul Sleng prison, where as many as 20,000 people suffered torture.<sup>173</sup> Caswell contends that the fact that the records of this prison were not destroyed, while other prisons did destroyed their records, was a significant reason why Duch became the first defendant in the tribunal.<sup>174</sup> Caswell also discusses an important distinction about archival evidence and legal evidence, underscoring that records considered archival evidence might not hold legal weight in the admissibility of evidence in court. Here's where historical accountability plays its role. As Caswell explains, "while the tribunal is

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<sup>172</sup> Eric Ketelaar, “A Living Archive, Shared by Communities of Records,” in Bastian and Alexander, *Community Archives: The Shaping of Memory*, 123.

<sup>173</sup> Michelle Caswell, “Khmer Rouge Archives: Accountability, Truth, and Memory in Cambodia,” *Archival Science* 10, no. 1 (March 2010): 26.

<sup>174</sup> Caswell, “Khmer Rouge Archives,” 30-31.

concerned with administering legal justice, it is the archives, not the tribunal that is tasked with establishing truth."<sup>175</sup>

### **2.3.3 From truth commissions to criminal accountability**

Augusto Pinochet Ugarte was arrested in London in October 1998, accused by Spanish judge Baltazar Garzón for crimes of genocide and torture. An eighteen-month long extradition process followed, ending with the decision not to extradite Pinochet to Spain because of medical reasons. Notwithstanding, the precedent was set: a former head of state was accused by the courts of another country of crimes committed during his time in power. This precedent provoked an effect worldwide that included Pinochet's indictment in Chile in 2000 and 2004, the conviction by the Spanish National Court of former Argentinean officers in 2005, and a criminal investigation for acts of genocide against former military officials from Guatemala, including former president Efraín Ríos Montt.

The Pinochet case and its implications to transitional justice is discussed by Naomi Roht-Arriaza in *The Pinochet Effect: Transnational Justice in the Age of Human Rights* (2006). Roht-Arriaza, professor at the University of California Hastings College of Law, narrates the ordeal of relatives of victims of the dictatorship, lawyers, and human rights groups to finally bring Pinochet to face criminal charges. Her narrative also includes references to records. The criminal investigation against Gen. Pinochet included requests from Judges Garzón and García Castellón to the Clinton administration,<sup>176</sup> asking for documentary evidence about Pinochet, which led to

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<sup>175</sup> Caswell, "Khmer Rouge Archives," 36

<sup>176</sup> Roht-Arriaza, *The Pinochet Effect*, p. 26

the Chile Declassification Project. Also, the lawyers that presented the Argentine case used records of the Argentinean truth commission to build their case.<sup>177</sup>

In order to better understand what led to these events it is important to look at three main components. First, the accusations in Spain were based on the concept of universal jurisdiction. Roht-Arriaza explains,

Under this type of jurisdiction, the connection to the prosecuting state is not made through any particular connection of the state to the criminal event, but rather to the nature of the crime itself. Certain crimes are so universally agreed to be heinous, so potentially disruptive of international peace, and so difficult for any one state to adequately prosecute, that all states have the right to try anyone accused of them.<sup>178</sup>

The criminal complaints filed in the Spanish court are also based on a particular statute of Spanish law that allows the courts' jurisdiction over cases involving non-Spaniards accused of crimes committed abroad. It was Carlos Castresana, a Spanish anti-corruption prosecutor, who first identified this statute to file a complaint against torturers in Argentina.<sup>179</sup>

The tireless work of NGOs, human rights groups, and individuals like Castresana is the second important component. Ellen Lutz and Kathryn Sikkink argue that this wave of trials, which they call the "justice cascade," was "a result of the concerted efforts of small groups of activist lawyers who pioneered the strategies, developed the legal arguments, often recruited the plaintiffs and/or witnesses, marshaled the evidence, and persevered through years of legal challenges."<sup>180</sup> Roht-Arriaza underscores the close coordination and networking among these groups to obtain and present evidence to the courts. "Sifting through the wealth of declassified U.S. government documents, or the reams of police files in the Archive of Terror in Paraguay, to

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<sup>177</sup> Roht-Arriaza, *The Pinochet Effect*, p. 16-17

<sup>178</sup> Roht-Arriaza, *The Pinochet Effect*, 7.

<sup>179</sup> Roht-Arriaza, *The Pinochet Effect*, 2.

<sup>180</sup> Ellen Lutz and Kathryn Sikkink, "The Justice Cascade: The Evolution and Impact of Foreign Human Rights Trials in Latin America," *Chicago Journal of International Law* 2, no. 1 (Spring 2001): 2.

find the nuggets that would fuel Operation Condor-linked prosecutions in numerous countries required a high degree of cross-border cooperation and coordination,”<sup>181</sup> Roht-Arriaza states.

The availability of documentary evidence provides the third important aspect to understand the Spanish trials. Lutz and Sikkink provide an excellent rationale:

Since the mid 1970s, human rights NGOs in Chile, Argentina, Guatemala, and elsewhere, to the extent their governments allowed them to operate at all, dedicated themselves to protesting and documenting human rights violations and ensuring that the evidence they uncovered was protected. This served multiple functions. It served as a clearinghouse of information that domestic attorneys could use when demanding information about the whereabouts of a disappeared person or seeking the release of a political prisoner. It preserved a record that could one day be used to hold perpetrators accountable and ensure that history was accurately recorded.<sup>182</sup>

Other scholars echo this explanation. Human rights lawyer Reed Brody affirms that the case against Augusto Pinochet did not start in London in 1998, but rather soon after the 1973 *coup d’état* that brought the General into power, when human rights activists and organizations started to document every single case of human rights abuse carried out by the military regime.<sup>183</sup> Brody also cites Roberto Garretón, who was Legal Director of the *Vicaría de la Solidaridad* (Vicariate of Solidarity) in Chile,<sup>184</sup> who states that, “while we did not know it at the time, the painstaking work of documentation we did then is now being used – 25 years later – to bring Pinochet to justice.”<sup>185</sup> Prominent Chilean writer Ariel Dorfman also accentuates the significance

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<sup>181</sup> Roht-Arriaza, *The Pinochet Effect*, 211

<sup>182</sup> Roht-Arriaza, *The Pinochet Effect*, 8

<sup>183</sup> Reed Brody, “The Case of Augusto Pinochet,” in Reed Brody and Michael Ratner, eds., *The Pinochet Papers: The Case of Augusto Pinochet in Spain and Britain* (The Hague; Boston: Kluwer Law International, 2000), 8.

<sup>184</sup> The *Vicaría de la Solidaridad* was founded in 1976 and served under the umbrella of the Chilean Catholic Church. During its existence, the Vicariate not only offered legal support and social assistance to the victims, but also created a valuable documentation of their investigations about the disappeared and about human rights violations by the dictatorship. Following the transition to democracy, the Catholic Church decided to close the Vicariate and in 1992 created the Fundación de Documentación y Archivo de la Vicaría de la Solidaridad. The archive is considered the main repository about repression during the Pinochet years, with over 85,000 judicial documents as evidence of the over 45,000 persons that received attention from the Vicaría.

<sup>185</sup> Roberto Garretón, cited in Brody, “The Case of Augusto Pinochet,” 21.

of the archives of the *Vicaría de la Solidaridad*. In his reflections of the Pinochet case in London, Dorfman acknowledges the archive of the *Vicaría*.

Without those archives, there would have been no lawsuits against Pinochet, no detailed charges by the relatives, no Truth and Reconciliation Commission or Report, no material for the lawyers abroad to quote from, no articles by journalists telling Chile's story, no trial and, of course, no book like this one.<sup>186</sup>

National Security Archive Senior Analyst Kate Doyle, writing about her testimony during the trial of Alberto Fujimori in Peru and during Spain's National Court investigation of the Guatemala Genocide, also points to the importance of records as evidence.<sup>187</sup> She explains that after the arrest of Pinochet in London, courts in Latin America increasingly started to implement their own trials for past human rights violations and faced the challenge of obtaining documentary evidence. Declassified records provided by the National Security Archive were critical. Doyle also points to the discovery of hidden archives in Latin America.

Judicial procedures over human rights abuses have also taken place in the United States, not because of universal jurisdiction, but because of a one-sentence provision from the 1789 Judiciary Act. This statute, known as the Alien Tort Claims Act (ATCA) or the Alien Tort Statute (ATS), states that, "The district courts shall have original jurisdiction of any civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States."<sup>188</sup> Peter Henner underscores that this provision is just jurisdictional.<sup>189</sup> Indeed, litigations filed under this act do not lead to a criminal sentence but rather to monetary compensation. The

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<sup>186</sup> Ariel Dorfman, *Exorcising Terror: The Incredible Unending Trial of General Augusto Pinochet* (New York: Seven Stories Press, 2002), 210.

<sup>187</sup> Kate Doyle, "Un Testimonio Inédito de Kate Doyle, del National Security Archive. Por Qué Testifiqué Contra Dos Dictadores: Fujimori y Ríos Montt," *Emequis* (September 28, 2009): 19-26.

<sup>188</sup> Alien's Action for Tort, U.S. Code 28, § 1350.

[http://www4.law.cornell.edu/uscode/html/uscode28/usc\\_sec\\_28\\_00001350----000-.html](http://www4.law.cornell.edu/uscode/html/uscode28/usc_sec_28_00001350----000-.html) (Accessed April 9, 2010)

<sup>189</sup> Peter Henner, *Human Rights and the Alien Tort Statute: Law, History and Analysis* (Chicago: American Bar Association, 2009), 1.

first instance where the ATS was used for a case of human rights violations was in 1980, with *Filártiga v. Peña-Irala*,<sup>190</sup> with the number of cases considerably growing since the year 2000.<sup>191</sup>

The precedent of *Filártiga v Peña-Irala* opened the doors for human rights cases in the U.S. courts. Jeffrey Davis, assistant professor at the University of Maryland-Baltimore County Department of Political Science, examines this wave of court cases in his book *Justice Across Borders: The Struggle for Human Rights in U.S. Courts* (2008). Like Roth-Arriaza in *The Pinochet Effect*, Davis recognizes the tireless efforts of NGOs in the struggle for accountability as one of the main reasons for achieving justice through the courts. The work of this human rights groups, Davis explains, have been “absolutely indispensable” in the successful use of the ATS, and that this success is driven by the groups’ capacity for mobilization and networking.<sup>192</sup> One of the NGOs more predominantly discussed by Davis is the Center for Justice of Accountability (CJA), who has received assistance from the National Security Archive in multiple cases.

Although briefly, Davis also addresses issues related to records. In his explanation of the importance of networks in the human rights movement, he describes the challenges of gathering sufficient evidence for the case. He quotes Matthew Eisenbrandt, Litigation Director for CJA, who talks about the difficult, and usually ineffective, use of the Freedom of Information Act to obtain documentary evidence. Eisenbrandt mentions the case against a participant of the

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<sup>190</sup> The complaint was filed by the Center for Constitutional Rights in New York on behalf of the family of Joelito Filártiga, kidnapped and murdered by the Paraguayan Police in 1976, during the dictatorship of Alfredo Stroessner. Norberto Peña-Irala, then inspector general of the police in Asunción, was responsible for Joelito’s death. Joelito’s sister, Dolly, was living in the United States late in the 1970s and learned that Peña was illegally living in New York. She decided to pursue legal action against Peña. For an account of this case see Henner, *Human Rights and the Alien Tort Statute*, p. 51-57, and Jeffrey Davis, *Justice Across Borders: The Struggle for Human Rights in U.S. Courts* (Cambridge: Cambridge University Press, 2008), 17-22.

<sup>191</sup> Henner, *Human Rights and the Alien Tort Statute*, 2.

<sup>192</sup> Davis, *Justice Across Borders*, 51.

assassination of Monsignor Oscar Romero in El Salvador in 1980,<sup>193</sup> where they received declassified records long after the case was filed, documents that were “absolutely irrelevant.”<sup>194</sup> Davis also echoes the argument from transitional justice scholars, discussed above, that view these legal proceedings as an opportunity to create a historical record.<sup>195</sup> Lawyers and plaintiffs usually see these legal cases as an opportunity to finally tell their stories, and be heard.

## 2.4 CONCLUSION

This literature review places access to records, discovery of hidden archives and human rights documentation at the core of the struggle to reckon with legacies of human rights abuses. It underscores that these archives are not mere sources for historical research, but even more important, critical players affecting the outcomes of accountability mechanisms. Therefore, archivists should expand the scholarship about accountability to address the theoretical and practical challenges of archives in the context of human rights, and more specifically transitional justice. This might include developing a research agenda with an archival perspective to the challenges of transitional justice. It should include close analysis of more case studies and

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<sup>193</sup> After learning that Alvaro Rafael Saravia, one of the persons linked to the assassination of Monsignor Romero, was living in Fresno, California, the CJA filed a lawsuit against him in September 2003. Judge Oliver Wanger found Saravia liable as a direct participant of Monsignor Romero’s assassination and ordered him to pay \$10 million in damages. Saravia was tried in absence, since he went into hiding after being served with the complaint. For more information of the case see: <http://www.cja.org/article.php?list=type&type=77>. On March 2010, marking the 30<sup>th</sup> anniversary of Monsignor Romero assassination, the Salvadoran online newspaper *El Faro* published a recent interview with Saravia, who’s still at large. He accepts his role in the assassination. See Carlos Dada, “How we Killed Archbishop Romero,” *El Faro*, March 25, 2010, <http://www.elfaro.net/es/201003/noticias/1416/> (Accessed August 30, 2010)

<sup>194</sup> Davis, *Justice Across Borders*, 81.

<sup>195</sup> Davis, *Justice Across Borders*, 294-296.

additional empirical research. This study of the National Security Archive in the context of transitional justice in Latin America will be an important contribution to this scholarship.



### 3.0 METHODOLOGY

This dissertation examined the participation of the National Security Archive during the processes to pursue accountability for past human rights abuses in Latin America. This study implemented case study as the research methodology. Historical study of primary and secondary sources was employed. While the research focused mainly on primary and secondary sources, I also performed five semi-structured interviews, particularly regarding the Archive's work in Guatemala.

The methodological approach implemented in this study was also influenced by methods implemented by scholars of transitional justice and human rights. These works were important sources for the literature review. Three examples are worth mentioning. Naomi Roht-Arriaza's *The Pinochet Effect* relied on online information, legal documents, news reports and interviews to explain the efforts that led to the indictment of General Pinochet in Spain. Jeffrey Davis' *Justice Across Borders: The Struggle for Human Rights in U.S. Courts* looks at judicial documents from four trials in the United States where the Alien Torts Claim Act was used to sue individuals involved in human rights abuses abroad. Davis also interviewed lawyers involved in the cases, particularly from the Center for Justice and Accountability. Finally, Cath Collins, in *Post-Transitional Justice: Human Rights Trials in Chile and El Salvador*, makes recommendations on how to study what she calls "post-transitional justice," which is the period

that starts with the arrest of General Pinochet in 1998 and the growing number of criminal prosecutions that has taken place in Latin America since then. This is what Collins suggests,

It is suggested that a survey of post-transitional justice trajectories of human rights organizations, combined with in-depth analysis of particular post-transitional accountability cases, is the most adequate procedure.<sup>196</sup>

Throughout my research, I identified ten legal cases in which the National Security Archive became involved to study the organization's role and the impact of records in these judicial investigations.

### 3.1 CASE STUDY

*The SAGE Encyclopedia of Qualitative Research Methods* defines case study as “a research approach in which one or a few instances of a phenomenon are studied in depth.”<sup>197</sup> As the definition states, case study can concentrate on one or multiple events or phenomena. Political scientist John Gerring states its main purpose. “A *case study*,” Gerring explains, “may be understood as the intensive study of a single case where the purpose of that study is – at least in part – to shed light on a larger class of cases (a population).”<sup>198</sup> Robert K. Yin divides the definition of case study in two parts. The first part of the definition explains the scope of case study:

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<sup>196</sup> Cath Collins, *Post-Transitional Justice: Human Rights Trials in Chile and El Salvador* (University Park, PA: Pennsylvania State University Press, 2010): 36.

<sup>197</sup> Lisa M. Given, ed., *The SAGE Encyclopedia of Qualitative Research Methods* (Los Angeles, CA: SAGE Publications, 2008), 68.

<sup>198</sup> John Gerring, *Case Study Research: Principles and Practices* (Cambridge: Cambridge University Press, 2007), 20.

A case study is an empirical inquiry that investigates a contemporary phenomenon in depth and within its real-life context, especially when the boundaries between phenomenon and context are not clearly evident.<sup>199</sup>

The second part of the definition covers the technical characteristics of case study methodology:

The case study inquiry copes with the technically distinctive situation in which there will be many more variables of interest than data points, and as one result relies in multiple sources of evidence, with data needing to converge in a triangulating fashion, and as another result benefits from the prior development of theoretical propositions to guide data collection and analysis.<sup>200</sup>

These definitions underscore the depth of study as an essential characteristic of case study research. By focusing on one or a few cases, the researcher gains better understanding of a particular phenomenon. Bruce L. Berg underscores that case study is usually related to theory building, with some scholars suggesting that it can also be useful for theory testing.<sup>201</sup>

As the second part of Yin's definition states, case study as a research methodology usually encompasses various methods of inquiry. Triangulation, meaning a combination of methods to research the topic under study,<sup>202</sup> strengthens case study data collection.<sup>203</sup> The researcher gathers information from multiple sources, an action named "triangulation of data sources," and which includes obtaining information from interviews, written documents, archival materials and/or other documents. "Each type of source of data will yield different insights regarding the phenomena under study,"<sup>204</sup> the SAGE encyclopedia states. Finally, Stake accentuates that triangulation reduces the probability of misinterpretation.<sup>205</sup>

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<sup>199</sup> Robert K. Yin, *Case Study Research: Design and Methods*, 4th ed. (Los Angeles, CA: SAGE Publications, 2009), 18.

<sup>200</sup> Yin, *Case Study Research: Design and Methods*, 18

<sup>201</sup> Bruce L. Berg, *Qualitative Research Methods for the Social Sciences*, 7th ed. (Boston: Allyn & Bacon, 2009), 319.

<sup>202</sup> Given, *The SAGE Encyclopedia of Qualitative Research Methods*, 892.

<sup>203</sup> Yin, *Case Study Research: Design and Methods*, 114.

<sup>204</sup> Given, *The SAGE Encyclopedia of Qualitative Research Methods*, 893.

<sup>205</sup> Stake, "Qualitative Case Studies," 453.

Despite the extensive use of case study research there are still disputes regarding the definition of a case study, the application of this method and its contribution to research. Piet J. M. Verschuren stresses that criticisms to case study research question its scientific quality, specially the involvement of the researcher. According to critics, this involvement, along with the implementation of methods like participant observation and in-depth interviews, put into question the researcher's independence. Verschuren adds that the main criticism of case study "is its low generalizability as a consequence of the fact that only one or two cases are studied."<sup>206</sup> Yet, case study research has been and still is one of the main methods implemented in a wide range of disciplines. In John Gerring words,

This leads to a paradox: although much of what we know about the empirical world has been generated by case studies, and case studies continue to constitute a large proportion of the work generated by the social science disciplines... the case study *method* is generally unappreciated – arguably, because it is poorly understood.<sup>207</sup>

Case study methodology has been widely applied to the field of archival studies. This comes as no surprise since one of the best approaches to study records and recordkeeping is through the close analysis of particular events, groups or individuals. Archival literature about accountability also builds mainly from case studies. Similarly, research topics that explore social and political implications of records and recordkeeping have been part of the diverse number of topics studied by archivists since the mid 1990s.<sup>208</sup> Next steps in archival scholarly work should consider the application of comparative studies, a point also raised by Anne Gilliland and Sue McKemmish.<sup>209</sup>

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<sup>206</sup> Piet J. M. Verschuren, "Case Study as a Research Strategy: Some Ambiguities and Opportunities," *International Journal of Social Research Methodology* 6, no. 2 (April 2003): 122.

<sup>207</sup> Gerring, *Case Study Research: Principles and Practices*, 8.

<sup>208</sup> Annes Gilliland and Sue McKemmish, "Building an Infrastructure for Archival Research," *Archival Science* 4 (2004): 152.

<sup>209</sup> Gilliland and McKemmish, "Building an Infrastructure for Archival Research," 152.

### 3.2 RESEARCH DESIGN

This dissertation selects the National Security Archive as the unit of study to examine how archives and records have impacted transitional justice mechanisms in Latin America. Qualitative research based on historical analysis and semi-structured interviews were employed. The historical analysis was based on the study of court decisional documents, press reports, NSA Electronic Briefing Books and blog postings, and secondary sources. I also consulted declassified U.S. government records about Peru, Guatemala and El Salvador available through the Digital National Security Archive. The interviews focused mainly on the NSA work in Guatemala.

The research question for this dissertation is: **What roles have the National Security Archive played in mechanisms of accountability for past human rights violations in Latin America?** This question has been examined by: a) exploring the scope of the work of the Archive in the region and, b) a deeper examination to the Archive's work in Guatemala. The National Security Archive has contributed significantly to mechanisms of accountability that address the legacy of human rights violations in Latin America. Just in criminal trials or lawsuits the Archive has provided declassified documents to cases in Mexico, Guatemala, Uruguay, Chile, Peru, Argentina and Spain.<sup>210</sup> Therefore, I identified six legal cases from El Salvador, Peru, Uruguay and Argentina, and three cases from Guatemala (see Table 1). These cases were identified through the National Security Archive's Electronic Briefing Books and blog, and my own research. For each case I studied the court decision and performed additional research with

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<sup>210</sup> "Archive Expert Testifies in Fujimori Trial," National Security Archive Electronic Briefing Book No. 256, September 9, 2008, <http://www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB256/index.htm> (Accessed March 13, 2010). Outside of Latin America and Spain, the Archive has provided records to cases in Liberia, Sierra Leone, Indonesia, and Ruanda.

the study of news, reports and secondary sources. In the three cases from Guatemala I also obtained information through the interviews

The principal reason for doing a more in-depth examination of the National Security Archive's work in Guatemala is because it is the country where the Archive has been more involved. A historical analysis of the impact of archives during the Guatemalan transition that began in 1996, and the role of the NSA since the beginnings of this transition, presents an excellent example to explore the political factors that affect the access, use and preservation of archives in the human rights context. The NSA work in Guatemala dates back to the early days after the peace agreement between the Guatemalan government and the *Unidad Revolucionaria Nacional Guatemalteca* (URNG) in 1994 that created the CEH, and continues today with the ongoing investigation by Judge Santiago Pedraz in Spain's National Court. The Archive's Guatemala Documentation Project, which in 2001 released the report "The Guatemalan Military: What the U.S. Files Reveal," included the design and construction of a database that contains the

**Table 1.** Legal cases studied for the dissertation

<b>Case (Country of events)</b>	<b>Court/Commission</b>	<b>Years</b>
Nicolas Carranza (El Salvador)	U.S. District Court for the Western District of Tennessee	2005
Murder of Jesuits priests, their housekeeper and her daughter (El Salvador)	Spanish National Court (Madrid, Spain)	2008-2011
Juan María Bordaberry (Uruguay)	Uruguayan Supreme Court of Justice	2002-2010
Orletti Motors (Argentina)	Oral Federal Tribunal of Buenos Aires	2010-2011
Rosario Detention Center (Argentina)	Oral Federal Tribunal of Rosario	2011
Alberto Fujimori (Peru)	Peruvian Supreme Court, Special Tribunal	2007-2009
Myrna Mack (Guatemala)	<i>Tribunal Tercero de Sentencia Penal</i> (Guatemala)	2002
<i>Diario Militar</i> (Guatemala)	Inter-American Commission on Human Rights (Washington, D.C.)	2005-2011
Edgar Fernando García (Guatemala)	<i>Tribunal Octavo de Sentencia Penal</i> (Guatemala)	2010

names of military officers from almost 300 military units. This database, created by NSA Analyst Carlos Osorio, was used by the CEH. The data for this part was gathered from semi-structured interviews, NSA's Electronic Briefing Books and blog, declassified documents, news reports and secondary sources.

Absent from this dissertation is an in-depth history of the National Security Archive. This is a topic that deserves its own dissertation. As indicated in Chapter 1, the Archive is involved with a wide range of issues relating to freedom of information and government accountability. Nevertheless, the study of the Archive's work in Latin America provides an opportunity to reflect about some of the reasons why this archival institution exists. It also opens the opportunity to continue studying the close relation between archives and accountability, and the critical role they play to address legacies of human rights abuses.

David A. Wallace, writing about the role of archivists with historical and contemporary justice, sums up the importance of understanding both context and content of records to better assess the relation between archives and justice. He explains,

... I believe that the connection between archives and justice depends, in part, upon a sharp examination of what types of archives survive, which do not, and why this is the case. It also depends in part on sharp examinations of «document viewing»: Who gets to create, edit, use, withhold, and destroy? And to what effect? Only by looking expansively at the role, biography, and genealogy of the available written historical record and the stories they can tell and, perhaps more significantly, cannot tell, can we assess versions of history based off such sources.<sup>211</sup>

I will add that beyond assessing versions of history, archivists can also use this approach to assess how the historical record can open the doors to mechanisms of accountability for human

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<sup>211</sup> Wallace, "Historical & Contemporary Justice and the Role of Archivists."

rights violations, regardless if the mechanism is criminal prosecution, truth commission or the work of human rights organizations and social movements. This is the main argument driving the research methodology for this dissertation.

### **3.2.1 Data collection and analysis**

The bulk of the data collected came from a combination of textual sources, including National Security Archive's Electronic Briefing Books, reports and blog postings, legal decision documents, news, and secondary sources. I also conducted five semi-structured interviews, particularly for the study of the NSA work in Guatemala. Two video recordings of lectures by Archive staff were also studied.

Because of the approach implemented for this dissertation, the majority of the sources came from outside of the National Security Archive. During a visit to the Archive I surveyed a set of files of FOIA requests about Guatemala. An initial appraisal of these FOIA files showed that the content of these records are not very revealing, but rather shows a bureaucratic process of correspondence between the Archive and government agencies. I originally considered the selection of a set of these files to do a content analysis. However, the data collected through other sources, including the interviews, provided sufficient information to establish and examine the work of the NSA in Guatemala. From my point of view, the FOIA files were not going to provide information relevant to answer this dissertation's research question.

To analyze the data, qualitative analysis of content was implemented. While this method has some similarities to content analysis, particularly regarding categorization, qualitative analysis of content goes beyond quantitatively extracting particular themes or words. Yan Zhang and Barbara M. Wildemuth explain that this qualitative approach "pays attention to unique



themes that illustrate the range of the meanings of the phenomenon.”<sup>212</sup> During my close reading of the sources I identified the themes through the following questions:

1. What does the document says about the National Security Archive?
2. What impact do the records provided by the National Security Archive have in mechanisms of accountability for past human rights violations in Latin America?

This approach was particularly useful for the analysis of court decisional documents. For each document, I identified any reference to the National Security Archive and/or to records provided by the institution. I also searched and retrieved news about the legal case and identified those who mention the Archive’s participation. This approach, along with the information obtained from publications, web postings and additional reports, provided an important context to answer the research question. The semi-structured interviews served to complement the findings from the qualitative analysis of the textual documents.

### **3.2.1.1 Textual materials**

As mentioned above, the textual documents included National Security Archive’s Electronic Briefing Books, reports and blog postings, court decisional documents, news, and secondary sources. It is important to mention that as a bilingual student I was able to analyze documents in English and Spanish. This is particularly significant since this dissertation includes the study of newspapers in Spanish, online information from Latin American human rights groups and legal decision documents from Latin American countries that are only available in Spanish.

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<sup>212</sup> Yan Zhang and Barbara M. Wildemuth, "Qualitative Analysis of Content," in Barbara M. Wildemuth, *Applications of Social Research Methods to Questions in Information and Library Science* (Westport, CT: Libraries Unlimited, 2009), 309.

### *National Security Archive sources*

*Electronic Briefing Books and reports* – Thirteen Electronic Briefing Books were studied. The Electronic Briefing Books are available at the Archive's website and present digitized documents of a particular event. Each briefing book provides a summary of the event and how the documents released are related to it. Each document is also accompanied by its own summary. The Archive also publishes reports about declassification initiatives. For the list of Electronic Briefing Books see the Bibliography.

*Publications by staff of the NSA* – Analysts from the National Security Archive have published books, journal and magazine articles and posts at the Archive's blog. A number of these publications, and specially the blog posts contain narratives of staff's experience with particular cases in Latin America. For the list of Electronic Briefing Books see the Bibliography.

*Collection's guides* – The collections guides available through the Digital National Security Archive were valuable sources for the understanding of how the NSA collects and publishes the materials. Each guide includes a methodology section that describes how a particular documentation project was planned and implemented. I consulted the following collections guide:

1. "El Salvador: The Making of U.S. Policy, 1977-1984."
2. "El Salvador: War, Peace, and Human Rights, 1980-1994."
3. "Peru: Human Rights, Drugs and Democracy, 1980-2000."

4. “Death Squads, Guerrilla War, Covert Operations, and Genocide: Guatemala and the United States, 1954-1999.”

The guides for the Peru and Guatemala collections also included an essay written by the project director. The essays provide a historical context to the conflicts and what do the declassified records tell.

*Court decisional documents*

Legal decisions provide a very good source to analyze the impact of records used as evidence in criminal trials. In the case of human rights trials the availability of formerly secret documents has been critical, and the National Security Archive has provided important U.S. documents obtained through FOIA. Furthermore, NSA analysts Kate Doyle and Carlos Osorio have testified in trials in Peru and Argentina, respectively. Some of the legal decisions describe how the documents provided by the Archive served as evidence in the investigation. This includes the guilty verdict against former Peruvian President Alberto Fujimori.

Reading these court decisions proved what scholars from the field of transitional justice have presented regarding the historical value of these documents. As explained in Chapter 2, court decisions and documentation also become an authoritative historical record. The decisional documents studied for this dissertation not only describe the specific criminal charges and the judges’ decision, but they also include a historical overview of the period in which the crimes were committed.

I obtained access to court records from the trial of Colonel Nicolás Carranza through PACER (Public Access to Court Electronic Records), a government database that provides access to case files from federal appellate, district and bankruptcy courts in the United States. The

website derechos.org was also a very important source. The website is maintained by *Equipo Nizkor*, an international organization founded in 1994 in Spain that collects and disseminates information about human rights. It includes news, reports, court decisions and trial transcripts.<sup>213</sup>

*Declassified U.S. government documents* – I consulted declassified U.S. government documents that were presented as evidence in human rights investigations. I accessed these documents through the Digital National Security Archive, which provides remote access to archival collections published by the institution.

I also filed two FOIA requests. I filed one request to the FBI, without any expectations, seeking any information the federal agency had about the National Security Archive. The FBI responded indicating that they don't have any records about the organization. My second request was made to the Department of State. During my examination of the NSA work in Peru, which included an interview with the former director of the NSA Peru Documentation Project, I learned about the efforts by the Peruvian truth commission to obtain declassified documents. In my request to the State Department I asked for cables related to these efforts, covering the years 2001 – 2003. I received 16 declassified documents.

*News reports* – Through Lexis Nexis and newspapers' online archives I was able to access news reports from the United States, El Salvador, Spain, Uruguay, Argentina, Peru, and Guatemala. The use of these news reports was twofold. First, I searched and retrieved news from 1986 to the early 1990s that covered the National Security Archive. The objective was to identify what the

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<sup>213</sup> For more information about the work of *Equipo Nizkor* and how they collect and evaluate information for dissemination see <http://www.derechos.org/nizkor/about.html> (Accessed January 31, 2012).

news media reported about the institution during its early years. Second, I studied news reports that were related to the countries and particular events discussed in this dissertation. For the list of newspapers see the Bibliography.

### **3.2.1.2 Semi-structured interviews**

The following semi-structured interviews were conducted:

1. Tamara Feinstein (April 11, 2011)

Tamara Feinstein was director of the NSA Peru Documentation Project. She collaborated with human rights groups and the Peruvian truth commission, providing assistance to the request of U.S. government records.

2. Jesse Franzblau (April 18, 2011)

Jesse Franzblau worked as a research assistant for the National Security Archive. He worked for the NSA Mexico Project and assisted with the Archive's work in Guatemala. This included doing research at the Archives of the Guatemalan National Police for the case of the *Diario Militar* and the Guatemala Genocide Case.

3. Kate Doyle (August 1, 2011)

NSA Senior Analyst Kate Doyle has worked extensively with issues related to human rights abuses in Latin America. She has been director of the NSA Guatemala Documentation Project and the Mexico Project. She testified at the trial of Alberto Fujimori in Peru and trials in Guatemala. She has collaborated with human rights organizations and truth commissions in their efforts to obtain declassified government records.

4. Gustavo Meoño (September 6, 2011)

Gustavo Meoño is the Director of the Archives of the Guatemalan National Police.

He has also served as president of the Rigoberta Menchú Tum Foundation.

5. Prof. Roxanna Altholz (September 19, 2011)

Prof. Altholz is Associate Director of the International Human Rights Clinic at the

University of California at Berkeley. She represented the plaintiffs of the *Diario*

*Militar* case before the Inter-American Commission on Human Rights.

Each interview was recorded and transcribed. While the questions for each interview varied, they covered the following topics: 1) the role of the National Security Archive in investigations of past human rights abuses; 2) collaboration between the National Security Archive and other organizations; 3) the impact of records in investigations of past human rights abuses.

My analysis of the data generated by the interview followed the approach applied to the analysis of textual documents. Therefore, I used this data to complement findings from my analysis of textual documents.

### **3.2.1.3 Secondary sources**

In addition to the literature review, secondary sources were used in the narrative to provide context for the events that led to the cases where the National Security Archive participated. This was particularly useful for historical context provided about the internal conflict in Guatemala and its transition. The use of secondary sources included consulting the reports from the truth commissions of Argentina, El Salvador, Peru and Guatemala.

### 3.3 LIMITATIONS OF THE STUDY

Cameron G. Thies, Associate Professor of Political Science at the University of Iowa, states that, “The selection of source materials for a research project *always* incurs the potential for claims of unwarranted selectivity and investigator bias.”<sup>214</sup> The topic for this dissertation is not exempt of this possibility. The criteria for the selection of materials included the researcher’s viability to access materials, and therefore potential important sources were not analyzed.<sup>215</sup> Documentation available in the Internet from human rights organizations, newspapers, and from government websites was of great value for this dissertation.<sup>216</sup> Yet, it is important to state that this is just a selection of a larger set of documentation.

Similarly, by focusing on the National Security Archive, insightful attention was not given to other evidence that along with that provided by the Archive was critical for investigations of past human rights abuses. By concentrating on the National Security Archive I neglected other possible documentation from other archives (partly because of limitations with traveling, expenses and time). This is particularly significant for the legal cases discussed in this dissertation. While the court decisions proved to be a very useful source of analysis,<sup>217</sup> in most of the cases I did not consult additional court files, and particularly trial transcripts.<sup>218</sup>

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<sup>214</sup> Cameron G. Thies, “A Pragmatic Guide to Qualitative Historical Analysis in the Study of International Relations,” *International Studies Perspectives* 3, no. 4 (November 2002): 355.

<sup>215</sup> For example, it would be interesting to study records created and gathered by the Guatemalan truth commission to look closer at how the documents provided by the National Security Archive impacted the commission’s investigative process.

<sup>216</sup> For example, regarding the trial of Alberto Fujimori in Peru, in which Kate Doyle testified, the over 700-page legal decision is available online. Other cases have their legal decisions available online.

<sup>217</sup> The court decisions studied for this dissertation provided significant information about the history of the period, the testimonies at the trials, and the value of the evidence.

<sup>218</sup> There were two exceptions: The lawsuit against Col. Nicolás Carranza in Memphis (see Chapter 4), and the Myrna Mack case (see Chapter 5).

#### 4.0 THE NATIONAL SECURITY ARCHIVE IN LATIN AMERICA

The intention of this chapter is to answer the research question, **what roles have the National Security Archive played in mechanisms of accountability for past human rights violations in Latin America**, in broader terms and therefore set the background for the more in-depth description of the work of the NSA in Guatemala. The National Security Archive has been involved in Latin American issues since its foundation, with declassified records on El Salvador being one of their first collections. Nevertheless, the Archive became more involved in the early 1990s because of the growing number of transitions during that period and the increasing need of information to investigate past human rights abuses.<sup>219</sup> Efforts to gain access to government archives were a fundamental part of truth commissions and other investigations over past human rights abuses. This included attempts to uncover the secrets locked in the archives of U.S. government agencies regarding Latin American dictatorships and the impact of U.S. policy in the region.

This chapter provides a brief historical background of the National Security Archive, with a focus on its connection to Latin America. The bulk of the chapter will focus on the Archive's involvement in cases in El Salvador, Paraguay, Uruguay, Argentina and Peru, with an emphasis on legal cases about past human rights abuses.

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<sup>219</sup> *Archivos y Cooperación: Diez Años de Archiveros sin Fronteras* (Barcelona: Archiveros Sin Fronteras, 2008): 22.



This chapter is built mainly through the study of truth commission reports, court decisional documents, news reports, and secondary sources. For the study of the Archive's work in Peru, I interviewed Tamara Feinstein, who was director of the NSA Peru Documentation Project. I also filed a FOIA request to the State Department asking for documents about the U.S. response to the Peruvian truth commission's request of declassified documents. I received sixteen declassified embassy cables related to these efforts and about the Peruvian congressional commission who investigated corruption charges against Alberto Fujimori's chief of intelligence Vladimiro Montesinos.

#### 4.1 HISTORICAL BACKGROUND

The foundation of the National Security Archive has Latin American links. In 1984, Scott Armstrong and Raymond Bonner compared documents about Central America obtained through FOIA.<sup>220</sup> Armstrong was working on a book about foreign policy while Bonner published *Weakness and Deceit: U.S. Policy and El Salvador* in 1985, relying on declassified documents and interviews to paint a bleak picture of the role of the U.S. in the civil war in the Central American country. In an interview for *The Times* in London, Armstrong explained that the documents showed discrepancies on what was redacted. “Where Ray got paragraphs A, C and E of a document, I’d get paragraphs B, D and F,” Armstrong stated.<sup>221</sup> Soon after, they decided to

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<sup>220</sup> Michael R. Gordon, "Washington Talk; A Fight Over Government Information," *The New York Times*, January 6, 1987, 19.

<sup>221</sup> Andrew Lycett, "The Best Way to Keep a Secret; National Security Archive; Media & Marketing," *The Times* (London), April 26, 1989.

create a repository for the declassified documents. In addition, other journalists and researchers decided to donate their documents.<sup>222</sup>

The archive officially opened its doors in January 1986, and it did not begin without controversy. The Reagan administration accused the archive of taking advantage of FOIA,<sup>223</sup> and of building a private archive at the government's expense.<sup>224</sup> The latter was argued because of NSA plans to sell collections built from the obtained declassified materials. The administration's concerns about the work of the NSA were reflected in the Winter 1986 issue of *FOIA Update*, a publication by the Department of Justice's Office of Information Law and Policy.<sup>225</sup> In an article about surrogate FOIA requests, which is defined as individuals or entities using FOIA on behalf of others, the National Security Archive is showcased as one example. After describing the goals of the archive, and its plans to sell document sets and indices of their materials, the publication states,

While it remains to be seen exactly how this new FOIA request enterprise will affect the functioning of federal agencies in its particularly sensitive subject matter areas, many agency officials are already quite concerned about its potential impact.<sup>226</sup>

One concern was the expected overwhelming number of FOIA requests, a concern raised because of prior experiences with Scott Armstrong.<sup>227</sup> Edward Shapiro, assistant general council for the Defense Department, had a similar view, warning that the Archive could crowd out others who are requesting information.<sup>228</sup> Agencies were also worried of "the risk that various items of

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<sup>222</sup> Gordon, "Washington Talk: A Fight Over Government Information," 19.

<sup>223</sup> Gordon, "Washington Talk: A Fight Over Government Information," 19.

<sup>224</sup> Gordon, "Washington Talk: A Fight Over Government Information," 19; Timothy Aeppel, "One Man's Push to Make Government Files Public," *Christian Science Monitor*, February 24, 1987, 3.

<sup>225</sup> *FOIA Update* ran from 1979 - 2000. All the issues are available online through <http://www.justice.gov/oip/foi-upd.htm> (Accessed November 23, 2011)

<sup>226</sup> "Surrogate FOIA Requests Increasing," *FOIA Update* 7, no. 1 (Winter 1986), [http://www.justice.gov/oip/foia\\_updates/Vol\\_VII\\_1/page1.htm](http://www.justice.gov/oip/foia_updates/Vol_VII_1/page1.htm) (Accessed November 23, 2011)

<sup>227</sup> "Surrogate FOIA Requests Increasing,"

<sup>228</sup> Aeppel, "One Man's Push to Make Government Files Public," 3.

seemingly nonsensitive information can be pieced together to reveal a sensitive larger picture."<sup>229</sup> Assistant attorney general Stephen J. Markman also raised the latter concern.<sup>230</sup> He also worried about the creation of additional similar institutions.<sup>231</sup>

This confrontation reached the courts, specifically regarding processing fees. On December 1986 the National Security Archive filed a lawsuit against the Department of Defense challenging the agency's decision to not waive or reduce processing fees. The NSA argued that it was entitled to the fees reduction because of the 1986 FOIA amendment, which established that educational institutions and representatives of the news media are exempt from paying certain charges.<sup>232</sup> The Archive argued its work falls into both categories. On 15 June 1988, the District Court for the District of Columbia ruled in favor of the Department of Defense<sup>233</sup> and the Archive subsequently appealed. On 28 July 1989 the DC's Court of Appeals partially reversed the district court's decision. While the NSA was not an educational institution, the ruling reads, the organization should be considered as representative of the news media, and therefore fee waivers applied.<sup>234</sup> The Department of Defense petitioned a rehearing to the court of appeals and a writ of certiorari to the Supreme Court, but it was denied.<sup>235</sup>

While the National Security Archive was founded as a research institute, its reach has expanded to advocacy work, both in the U.S. and abroad, and also as an organization closely involved with accountability and human rights issues. The latter has been the case primarily through the archive's work in Latin America. Kate Doyle reflects on this, explaining that the

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<sup>229</sup> "Surrogate FOIA Requests Increasing,"

<sup>230</sup> Gordon, "Washington Talk: A Fight Over Government Information," 19.

<sup>231</sup> Aeppel, "One Man's Push to Make Government Files Public," 3.

<sup>232</sup> "FOIA Reform Legislation Enacted," *FOIA Update* VII, no. 4 (1986), [http://www.justice.gov/oip/foia\\_updates/Vol\\_VII\\_4/page1.htm](http://www.justice.gov/oip/foia_updates/Vol_VII_4/page1.htm) (Accessed December 5, 2011)

<sup>233</sup> *National Security Archive v. Department of Defense*, Civil Action No. 86-3454; 1988 U.S. Dist. LEXIS 6395 (June 15, 1988)

<sup>234</sup> *National Security Archive v. Department of Defense*, No. 88-5217, 1989 LEXIS 10945 (July 28, 1989)

<sup>235</sup> *National Security Archive v. U.S. Department of Defense*, Civil Action No. 86-3454 (D.D.C. Jan. 15, 2008)

interest from some members of the NSA to investigate U.S. policy towards Latin America led them to encounter the issue of mass human rights abuses by regimes that were supported by the United States. In Doyle's words:

I will say that the confluence of the archive's beginnings at the end of the 1980s and the end of the Cold War in the sort of beginning of what we now... identify as kind of transitional period for Latin America. And a part of that process was the kind of urgency to clarify the past, and clarify specifically the State's role in repression and violence. And although the archive was founded as a research institute and an advocacy organization for the right to know, those of us who worked on Latin America... that was our focus. But when you talk about looking at a history of, or what we like to say at the Archive, the hidden history of U.S. history in the hemisphere you immediately come into contact, you know, sort of bump up against the history of repression and the history of violence, as the United States was so intimately involved in supporting what turned out to be violent and repressive military dictatorships or violent and repressive authoritarian regimes. So that's why I will say the Latin American part of the Archive very quickly, I will say in the early 1990s began bending towards working on uncovering the US relationship to oppression and very quickly began feeding into human rights investigations that were beginning to be under way in the region, as opposed to other parts of the research institute.<sup>236</sup>

Staff of the National Security Archive that researched U.S. foreign policy in China and East Europe, for example, were more interested in an historical perspective, but in Latin America it became mainly about Human Rights.

Most of the transitions in Latin America included the creation of truth commissions, with the 1990s being the most active decade.<sup>237</sup> Retributive justice efforts followed truth commissions and human rights trials began to grow since the late 1990s. The implementation of these mechanisms included attempts to obtain information from archives. These efforts became a core struggle for truth-seeking initiatives, and it reached the United States. As this and the following chapter shows, truth commissions, human rights groups and prosecutors requested information

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<sup>236</sup> Kate Doyle, interview with author, August 1st, 2011.

<sup>237</sup> The first truth commission in Latin America was established in Argentina in 1983, but from 1990 to 1999 truth commissions were established in Chile (1990), El Salvador (1992), Haiti (1995), Ecuador (1996) and Guatemala (1997).

from U.S. government agencies. The National Security Archive's experience with FOIA and the records housed at the research institution became an important asset to the investigations.

## **4.2 THE NATIONAL SECURITY ARCHIVE, TRUTH COMMISSIONS AND HUMAN RIGHTS TRIALS**

This chapter will focus on the work of the National Security Archive in El Salvador, Peru, Argentina, Paraguay and Uruguay. The Archive worked closely with El Salvador's truth commission. Lessons from this experience shaped the archive's collaboration with subsequent truth commissions, including Peru (explained in this chapter) and Guatemala (see Chapter 5). Peru's importance lies on the historic trial and conviction of former President Alberto Fujimori. The cases of Argentina, Paraguay and Uruguay have a common denominator: the Archive of Terror. The discovery of this archive, along with declassified U.S. government documents that are part of the NSA Southern Cone Documentation Project, emerged as important sources of evidence in a number of human rights trials.

### **4.2.1 El Salvador**

On 16 January 1992 in Mexico City, the government of El Salvador and the Farabundo Martí National Liberation Front (FMLN) signed a definite peace agreement ending a civil war that since 1980 claimed more than 75,000 victims.<sup>238</sup> The agreements included reforms to the

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<sup>238</sup> Oscar Martínez Peñate, ed., *El Salvador: Los Acuerdos de Paz y el Informe de la Comisión de la Verdad* (San Salvador: Naciones Unidas; Editorial Nuevo Enfoque, 2007), 11.

military, the judiciary and the integration of the FMLN as a political party.<sup>239</sup> It also included the creation of a UN sanctioned truth commission, which released its final report on 15 March 1993. Five days later, the government of El Salvador, led by the National Republican Alliance (ARENA) party, passed an amnesty law.<sup>240</sup> Arguing that such law was important "to promote and achieve national reconciliation,"<sup>241</sup> the legislation provided complete amnesty to any person that committed political crimes before January 1992. These events led to mixed results in the early years of the transition. As Cath Collins explains, on the positive side, the peace process finally put an end to the civil war, and human rights violations reduced significantly.<sup>242</sup> Collins also concludes,

Accountability, however, began to look like something of a lost cause. The UN operated in effect as a pro-peace, rather than a pro-accountability, actor, sponsoring a strong, albeit incomplete, truth initiative but remaining silent over subsequent amnesty.<sup>243</sup>

Still, accountability efforts emerged after the peace accords and continue today. While the amnesty law is still in effect, legal cases in the United States and in Spain have investigated perpetrators of human rights abuses. Two cases will be explained below: the lawsuit against Colonel Nicolas Carranza in Memphis, and the criminal investigation at Madrid's National Court of the murder of six Jesuit priests, their housekeeper and her daughter in San Salvador in 1989. In the first case, declassified U.S. government documents from the collections at the National Security Archive became critical evidence. In the latter, in addition to declassified documents, Kate Doyle provided expert testimony.

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<sup>239</sup> For the complete text of the peace agreements see *El Acuerdo de Paz de El Salvador: Del Acta de Nueva York a la Instalación de la COPAZ* (Ciudad de Guatemala: Instituto Centroamericano de Estudios Políticos, 1992), 23-87.

<sup>240</sup> Lawrence Michael Ladutke, *Freedom of Expression in EL Salvador: The Struggle for Human Rights and Democracy* (Jefferson, N.C.: McFarland & Co., 2004), 115.

<sup>241</sup> República de El Salvador. Asamblea Legislativa, "Ley de Amnistía General para la Consolidación de la Paz," 20 de marzo de 1993, 1. Translated by Joel A. Blanco-Rivera.

<sup>242</sup> Cath Collins, *Post-Transitional Justice: Human Rights Trials in Chile and El Salvador* / (University Park, Pa.: Pennsylvania State University Press,, 2010), 167.

<sup>243</sup> Collins, *Post-Transitional Justice*, 167.

#### 4.2.1.1 El Salvador's Truth Commission

As explained above, the Salvadoran truth commission was created during the peace negotiations. More specifically, it was established as part of the accords of 27 April 1991, which covered military reform and human rights. The agreement stated that the truth commission would be sponsored by the United Nations, which would name its three members. It mandated the commission to investigate human rights violations since 1980 and gave a period of six months to finish its work.<sup>244</sup> The commissioners were former president of the Inter-American Court of Human Rights Thomas Buergenthal, former Colombian President Belisario Betancur, and Reinaldo Figueredo Planchart, former minister of foreign relations for Venezuela.<sup>245</sup>

On 15 March 1993 the commission presented the report *From Madness to Hope: The 12-year War in El Salvador*.<sup>246</sup> The commission concluded that 85% of the human rights abuses were committed by the State, while 5% were attributed to the FMLN.<sup>247</sup> In part because of the limited time available for investigation (initially they were given six months and then got two more months), the commission report focused on thirty-two significant events. This included the assassination in 1980 of Archbishop Oscar Arnulfo Romero, the massacre at El Mozote, and the murder of the Jesuit priests, their housekeeper and her daughter in November 1989. Nevertheless, differing from what happened in Chile in 1991 and later in Guatemala in 1999, the

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<sup>244</sup> Martínez Peñate, ed., *El Salvador: Los Acuerdos de Paz y el Informe de la Comisión de la Verdad*, 34-35.

<sup>245</sup> Priscilla B. Hayner, *Unspeakable Truths: Transitional Justice and the Challenge of Truth Commissions* (New York: Routledge, 2011), 50.

<sup>246</sup> The English version report is available online at <http://www.usip.org/files/file/ElSalvador-Report.pdf> (Accessed February 11, 2011). For the Spanish version, <http://www.fundacionpdh.org/lesahumanidad/informes/elsalvador/informe-de-la-locura-a-la-esperanza.htm> (Accessed February 11, 2011).

<sup>247</sup> <http://www.usip.org/publications/truth-commission-el-salvador> (Accessed February 11, 2011)

report of the Salvadoran truth commission named perpetrators of human rights abuses for twelve of the thirty-two cases.<sup>248</sup>

One of the consequences of this report was that it contradicted the discourse by the administration of Ronald Reagan, which during the heat of the civil war diminished the role of the Salvadoran military in mass acts of repression. One such case was the massacre at El Mozote in 1981, where according to the truth commission report the Atlacatl Battalion killed over two hundred individuals.<sup>249</sup> On the wake of these findings, the U.S. Secretary of State Warren Christopher created a special panel to study how the department handled the situation when it took place. A report was released in July 1993, concluding that there were flaws in the way the Department reacted to the human rights situation in El Salvador.<sup>250</sup> Regarding the specific case of El Mozote, the panel concluded that the State Department should have acted more convincingly.<sup>251</sup> Congressional members reacted with indignation to the Department's handling of the massacre's investigation and prompted additional pressure from Congress to President Clinton to declassify all documents related to El Salvador's civil war.

One such strong voice was Representative Joseph Moakley, Democrat of Massachusetts. In 1991, he led a congressional investigation into the killings of the Jesuit priests, their housekeeper and her daughter at the University of Central America in El Salvador, concluding

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<sup>248</sup> Hayner, *Unspeakable Truths: Transitional Justice and the Challenge of Truth Commissions*, 50.

<sup>249</sup> Comision de la Verdad de la ONU, *De la Locura a la Esperanza: La Guerra de 12 Años en El Salvador* (Donostia (Gipuzkoa): Tercera Prentsa/Hirugarren Prentsa, 1993), 124. Other accounts place the number of dead to near 800. See Mark Danner, *The Massacre at El Mozote: A Parable of the Cold War* (New York: Vintage Books,, 1994)., and Leigh Binford, *The El Mozote Massacre: Anthropology and Human Rights, Hegemony and experience* (Tucson: University of Arizona Press,, 1996).

<sup>250</sup> George S. Vest, Richard W. Murphy, and I. M. Destler, *Report of the Secretary of State's Panel on El Salvador*, July 1993, 1.

<sup>251</sup> *Report of the Secretary of State's Panel on El Salvador*, 35.



that high commands of the Salvadoran forces ordered the killings.<sup>252</sup> A critic of U.S. policy on El Salvador, Representative Moakley constantly insisted on the declassification of records. On 7 June 1993, President Clinton sent a letter to Representative Moakley and other Democratic Congressional leaders stating that he had directed the staff from the National Security Council, the CIA, the State Department and the Department of Defense to do an expedited review of documents.<sup>253</sup> In November 1993 the government released approximately 12,000 documents, with additional declassification of records taking place in August 1994.<sup>254</sup>

Although the expedited declassification took place after the release of the report, the truth commission did examine declassified documents during its investigation. Moakley's investigation of the Jesuits' murders opened some doors to get access to secret documents. Thomas Buergenthal was selected as the liaison between the commission and an U.S. inter-agency group. Buergenthal's experience provided mixed results. He was given limited clearance by the State Department to examine certain documents, but he also faced denials of access to documents that were eventually declassified in 1993.<sup>255</sup> Buergenthal did examine declassified records at the National Security Archive.

The private National Security Archive... also proved to be a very valuable resource. Besides providing us with many documents, access to its files enabled us to learn what other information the U.S. government might have, and to verify the answers provided to us by the inter-agency group. In a number of cases, documents denied me by (sic) the inter-agency group on the ground that they were classified, turned out to have been previously declassified and released to the National Security Archive under the Freedom

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<sup>252</sup> Jefferson Morley, "The Jesuit Murder Mystery; Was the U.S. 'Deaf, Dumb and Blind' in Salvador?," *The New York Times*, July 18, 1993, sec. Outlook.

<sup>253</sup> Clifford Krauss, "Clinton Vows Full Review of U.S. Role in Salvador," *The New York Times*, June 13, 1993, sec. 1.

<sup>254</sup> National Security Archive, "El Salvador: War, Peace, and Human Rights, 1980-1994," Collection's Guide, <http://nsarchive.chadwyck.com/collections/content/EL/intro.jsp> (Accessed May 24, 2011)

<sup>255</sup> Thomas Buergenthal, "The United Nations Truth Commission for El Salvador," *Vanderbilt Journal of Transnational Law* 27, no. 3 (October 1994): 507-509.

of Information Act. This meant that we often had to cross-check the information provided by the U.S. government against the holdings in the National Security Archive.<sup>256</sup>

The experience of the National Security Archive with the Salvadoran truth commission impacted how the organization later worked with subsequent commissions in Latin America, and particularly with Guatemala.<sup>257</sup>

Almost twenty years after the peace agreements, the amnesty law remains in effect.<sup>258</sup> Therefore legal cases have taken place abroad. Since 1992 the Inter-American Commission on Human Rights has issued 43 reports regarding complaints filed by Salvadorans.<sup>259</sup> In the United States, the Center for Justice and Accountability (CJA) has used the Alien Tort Statute to file three complaints against former military officials living in the country, including the case against Colonel Carranza.<sup>260</sup> The CJA and the NSA have collaborated in various important international cases, perhaps the more important has been the Guatemala Genocide case at Spain's National Court.

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<sup>256</sup> Buerghenthal, "The United Nations Truth Commission for El Salvador," 509-510.

<sup>257</sup> Tamara Feinstein, phone interview by author; Kate Doyle, interview by author

<sup>258</sup> In 2009, the FMLN and its presidential candidate Mauricio Funes won the Salvadoran elections for the first time. Despite calls from groups to abolish the amnesty law, the government has not acted upon it. The administration of President Funes has argued that addressing the amnesty law is the responsibility of the legislative assembly. See Carlos Martínez, "¿Por Qué el Gobierno no Quiere Hablar de la Ley de Amnistía?," *El Faro*, March 23 2010, <http://www.elfaro.net/es/201003/noticias/1407/> (Accessed December 1, 2011)

<sup>259</sup> The data was obtained from IACHR's website, <http://www.cidh.oas.org/casos.eng.htm>, which lists the reports by year. While the website publishes reports dating back to 1974, I began my search in 1992 because it marked the end of the civil war. The year with more decisions issued by the commission was 1992, with 14 reports. Breaking down the numbers by periods show an interesting trend. From 1992 to 1995 there were 20 reports issued. The number of reports went down considerably during the period 1996-2004, with a total of 8 cases. But it went up to 15 from 2005 to 2011.

<sup>260</sup> The CJA filed a complaint in California against one of the officers involved in the assassination of Archbishop Oscar Audulfo Romero. See "Doe v Saravia. El Salvador. The Assassination of Archbishop Oscar Romero," <http://www.cja.org/article.php?list=type&type=77> (Accessed December 1, 2011). The other complaint was filed in Florida against former defense ministers, José Guillermo García and Carlos Vides Casanova. See "Romagoza Arce v. Garcia and Vides Casanova. El Salvador: Command Responsibility for Salvadoran Civil War Atrocities," <http://www.cja.org/article.php?list=type&type=82> (Accessed December 1, 2011);

#### 4.2.1.2 The Trial of Colonel Nicolas Carranza

On 1 November 2005 the United States District Court for the Western District of Tennessee at Memphis began the trial for case no. 03-2932. The plaintiffs were Salvadorans who experienced detention and torture, and relatives whose parents were executed during the early years of the civil war in El Salvador. The defendant was Colonel Nicolás Carranza, former Vice-Minister of Defense in El Salvador. The initial complaint, filed by leading attorney David R. Esquivel from Bass, Berry & Sims and the Center for Justice and Accountability (CJA), stated that,

Plaintiffs allege that Defendant Carranza exercised command responsibility over, conspired with, or aided and abetted subordinates in the Security Forces of El Salvador, or persons or groups acting in coordination with the Security Forces or under their control, to commit acts of extrajudicial killing, torture, crimes against the humanity, and cruel, inhuman or degrading treatment or punishment, and to cover up these abuses. Accordingly, Plaintiffs assert that Defendant is liable under domestic and international law for their injuries, pain, and suffering.<sup>261</sup>

Nicolás Carranza was Vice-Minister of Defense of El Salvador during the period 1979-1981, and therefore in charge of the National Guard, the Treasury Police and the National Police. Afterwards, he was named head of ANTEL, the government communication company, and in 1983 became head of the Treasury Police until he retired. In 1985 he immigrated to the United States and become a naturalized U.S. citizen in 1991.<sup>262</sup> The plaintiffs alleged that because of his

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<sup>261</sup> Chavez et al. v. Nicolas Carranza, Complaint (United States District Court for the Western District of Tennessee, December 10, 2003), 2. Available at [http://www.haguejusticeportal.net/Docs/NLP/US/Carranza\\_Complaint\\_1.pdf](http://www.haguejusticeportal.net/Docs/NLP/US/Carranza_Complaint_1.pdf) (Accessed December 5, 2011).

<sup>262</sup> See Davis, *Justice Across Borders: The Struggle for Human Rights in U.S. Courts*. Raymond Bonner, *New York Times* journalist who extensively covered the El Salvador conflict, described Colonel Carranza as an “archconservative military commander.” According to Bonner, Salvadoran political leaders who were seeking a political and peaceful solution to the conflict and the government of Jimmy Carter did not like having Carranza as Vice-Minister and even requested that he be moved from the position. See Raymond Bonner, *Weakness and Deceit: U.S. Policy and El Salvador* (New York: Times Book, 1984). Brian J. Bosch, who wrote a book considerably favorable to the action of the Salvadoran military, also described the disagreements over having Carranza as Vice-Minister. However, he argued that Carranza was wrongly considered part of the extreme right faction of the military. He describes Carranza as “a reasonable, intelligent officer.” See Brian J. Bosch, *The Salvadoran Officer Corps and the Final Offensive of 1981* (Jefferson, NC: McFarland & Company, Inc., 1999).

high position in the military, Colonel Carranza was responsible for at least investigating the mass abuses committed by military under his command. None of the plaintiffs accused Carranza of directly committing the human rights abuses, but rather not assuming responsibility for preventing them and not holding accountable those who committed them.

The evidence presented by the plaintiffs' lawyers included over sixty declassified U.S. government records, from the period 1980-1986 and mostly consisting of State Department cables. These and other documents were important during the witness testimonies of Ambassador Robert E. White and Professor Terry Karl.<sup>263</sup> In her expert report to the court, Professor Karl explains that she reviewed declassified documents housed at the National Security Archive.<sup>264</sup> During the trial, Professor Karl also mentioned that many of the declassified documents were the ones released after the Salvadoran Truth Commission report was published.<sup>265</sup>

Records from this release are the bulk of NSA's collection *El Salvador: War, Peace, and Human Rights, 1980-1994*.<sup>266</sup> It was the second collection about El Salvador published by the Archive. The first one, *El Salvador: The Making of U.S. Policy, 1977-1984*, began as part of the Central American Papers Project, which in turn contributed to the foundation of the Archive, and is based mostly on documents obtained through FOIA.<sup>267</sup>

While the testimonies from the victims or relatives of victims provided a strong story about what they went through, the declassified documents challenged Carranza's allegations of

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<sup>263</sup> Dr. Karl is Gildred Professor of Latin American Studies and Professor of Political Science at Stanford University. She has served as expert witness in other trials and investigation related to human rights abuses in Latin America.

<sup>264</sup> *Chavez et al. v Carranza*, Expert Report of Professor Terry Lynn Karl, No. 03-2932 M1/P (W.D.Tenn. 2006).

<sup>265</sup> *Chavez et al. v Carranza*, Transcript of Trial, November 7, 2005, 927-930.

<sup>266</sup> See "El Salvador: War, Peace, and Human Rights, 1980-1994," Collection guide, Digital National Security Archive. Available through <http://nsarchive.chadwyck.com>.

<sup>267</sup> See "El Salvador: The Making of U.S. Policy, 1977-1984," Collection guide, Digital National Security Archive. Available through <http://nsarchive.chadwyck.com>.

not being aware of the human rights violations committed under his supervision. The documents also describe the situation in El Salvador from the perspective of the U.S. embassy. Prof. Karl, when asked by Esquivel about how she prepared for her testimony, mentioned declassified records as one of the key sources of information. When she was interrogated about the importance of these documents, Prof. Karl explained:

What is very important about those documents is our ability to really see and understand the intelligence inside the United States that was going on at the time... Those documents are extremely important because they come, they're important for several reasons for someone like me. They show me what the United States understood to be – what was their understanding at the time.<sup>268</sup>

Robert E. White served as U.S. Ambassador to El Salvador from 1980-1981 and was a critic of the abuses committed by the Salvadoran military. Most of his testimony relied on explaining the information from embassy cables. He estimated that 50 to 60 telegrams a day were sent to the State Department. He stated that he signed all cables considered as important.<sup>269</sup> One of the documents presented was a secret cable sent by Ambassador White on 13 March 1980 in which he explains his thoughts on the military junta. While Ambassador White praises members of the junta who were looking for a moderate solution to the conflict, he also warns about the challenges the junta has with the leftist insurgency and from the ultra right.<sup>270</sup> Members of the ultra right, explained Ambassador White, included officers from the military's high command, increasing the possibilities of a coup attempt. The government would have been better served without this faction of the military, which according to Ambassador White,

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<sup>268</sup> *Chavez et al. v Carranza*, Transcript of Trial, November 7, 2005, 927-930.

<sup>269</sup> *Chavez et al. v Carranza*, Transcript of Trial, November 1, 2005, 313-314.

<sup>270</sup> Robert E. White to United States Department of State, "Assistance to GOES; Timing and Composition," Secret Cable, March 13, 1980.

included Colonel Carranza. "At least one senior officer, Col. Carranza, has got to go and the sooner the better," stated the Ambassador.<sup>271</sup>

The topic of the declassified documents was constant throughout the trial. David Esquivel's closing arguments referred to what the records showed, and particularly their value to help establish the line of command responsibility that Colonel Carranza had over the security forces. After quoting various embassy cables, Esquivel concluded,

Remember from Colonel Carranza's testimony, he admitted that when he was in the ministry of defense as the vice-minister of defense, he had command responsibility over the nonsecurity forces, the army, the air force and the national navy, but he has no explanation for why he is in the chain of command for those three entities and yet denies that he had command authority over the remainder of the branches of the Salvadoran military. It simply doesn't make sense... And document after document after documents in this trial proves that Colonel Carranza had that authority.<sup>272</sup>

After a three-week trial, Colonel Carranza was found liable of crimes against humanity by a jury and asked to pay \$6 million in damages to the plaintiffs. The money has not been completely collected,<sup>273</sup> and Esquivel admitted that the plaintiffs were not expecting to collect the money.<sup>274</sup> Col. Carranza's lawyers filed a Motion for Judgment Notwithstanding the Verdict, New Trial, and/or Remittitur on 1 February 2006. The defendant's motion for a new trial included the argument that many of the documents presented contained "hearsay statements" and therefore should have not been admitted as evidence.<sup>275</sup> The documents that fell into this

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<sup>271</sup> Robert E. White to United States Department of State, 2.

<sup>272</sup> *Chavez et al. v Carranza*, Transcript of Trial, November 14, 2005, 1651.

<sup>273</sup> According to the website of the Center for Justice and Accountability, only one of Carranza's bank accounts have been garnished.

<sup>274</sup> Hearn, Rebekah, "Memphian Carranza Found Guilty of Human Rights Abuses," *Memphis Daily News* 124, no. 54 (March 19, 2009).

<sup>275</sup> *Chavez et al. v Carranza*, Order Denying Defendant's Motion for Judgment Notwithstanding the Verdict, New Trial, and/or Remittitur, No. 03-2932 M1/P (W.D.Tenn. 2006), 14.

allegation included the Salvadoran Truth Commission report and four cables from the U.S. Embassy in El Salvador. The motion was denied.<sup>276</sup>

While the National Security Archive did not participate directly in this case, its role as a repository of declassified documents on U.S. foreign policy facilitated the access to important documents about human rights violations. The case also demonstrates the building of collaborations with other organizations and individuals. As mentioned above, the NSA and the CJA have been working together in other cases. Professor Karl has also assisted in other trials about El Salvador, including the Jesuits case explained next.

#### **4.2.1.3 Jesuits case**

One of the most dramatic events during the 12-year civil war in El Salvador took place on 16 November 1989 when six Jesuit priests, their housekeeper and her daughter were murdered at San Salvador's Central American University.<sup>277</sup> The perpetrators were members of the Atlacatl Battalion, a specialized unit that received training from the United States military and which was also responsible for the massacre at El Mozote.<sup>278</sup> These assassinations were committed in the heat of a strong offensive launched by the FMLN on 11 November that affected the country's capital, San Salvador.

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<sup>276</sup> *Chavez et al. v Carranza*, Order Denying Defendant's Motion for Judgment Notwithstanding the Verdict, New Trial, and/or Remittitur.

<sup>277</sup> For a chronology of the events see *The Jesuit Assassinations: The Writings of Ellacuría, Martín-Baró, and Segundo Montes, with a Chronology of the Investigation* (Kansas City, MO: Sheed & Ward, 1990). Also see Martha Doggett, *Death Foretold: The Jesuit Murders in El Salvador* (Washington, D.C.: Georgetown University Press, 1993).

<sup>278</sup> The Atlacatl Battalion received training at the School of the Americas. See Leslie Gil, *The School of the Americas: Military Training and Political Violence in the Americas* (Durham, Duke University Press, 2004): 197-198.

Following the discovery of the bodies, President Alfredo Cristiani ordered a full investigation.<sup>279</sup> The Commission for the Investigation of Criminal Acts submitted its final report on 12 January 1990, pointing responsibility to four military officials and five soldiers who were arrested and faced trial.<sup>280</sup> On September 1991 they were found guilty on charges of murder and conspiracy to commit acts of terrorism. Their sentences ranged from three to thirty years.<sup>281</sup>

No one was charged as intellectual author of the assassinations. The Salvadoran truth commission did investigate this angle. It concluded that on 15 November 1989 Colonel Guillermo Benavides Moreno, one of the convicted officers, received orders from Colonel René Emilio Ponce to assassinate father Ignacio Ellacuría and leave no witnesses. Father Ellacuría was working towards a peace solution to the conflict, but the Salvadoran government considered him a supporter of the FMLN.<sup>282</sup> The Salvadoran High Command, according to the truth commission, participated in the cover up following the assassinations.<sup>283</sup> In the United States, the report from the Special Task Force on El Salvador, led by House Representative Moakley, concluded that even though the investigation by the Salvadoran government was good in general, and resulted in arrests, "[t]he investigators have made little effort to determine whether senior military officers others than Col. Benavides might have has a role in ordering, or in covering up, the crimes."<sup>284</sup>

A formal accusation against the alleged intellectual authors was filed almost nineteen years after the massacre. On 13 November 2008, the Center for Justice and Accountability and the Spanish Association for Human Rights used the principle of universal jurisdiction to file a

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<sup>279</sup> *The Jesuit Assassinations: The Writings of Ellacuría, Martín-Baró, and Segundo Montes, with a Chronology of the Investigation*, 37.

<sup>280</sup> Comisión de la Verdad para El Salvador, *De la Locura a la Esperanza: La Guerra de 12 años en El Salvador* (San Salvador, New York: United Nations, 1993): 49.

<sup>281</sup> Comisión de la Verdad para El Salvador, *De la Locura a la Esperanza*, 49.

<sup>282</sup> Comisión de la Verdad para El Salvador, *De la Locura a la Esperanza*, 46.

<sup>283</sup> Comisión de la Verdad para El Salvador, *De la Locura a la Esperanza*, 47.

<sup>284</sup> United States House of Representatives, "Interim Report of the Speaker's Task Force on El Salvador," April 30, 1990, 6.



criminal complaint at Madrid's National Court against Cristiani and 14 former officers and soldiers.<sup>285</sup> The charges brought to the complaint were of crimes against humanity, state terrorism and cover up of crimes against humanity.<sup>286</sup> On 12 January 2009, judge Eloy Velasco Nuñez admitted the criminal complaint against the military officers, but rejected the complaint against Cristiani.<sup>287</sup>

The National Security Archive worked with the CJA, professor Terry Karl and human rights lawyer Carolyn Patricia Blum, helping with the identification of declassified documents about the murders.<sup>288</sup> Over 300 hundred documents, part of the NSA's collection *El Salvador: War, Peace, and Human Rights, 1980-1994*, were identified.<sup>289</sup> Kate Doyle also testified before judge Velasco Nuñez about the authenticity of the documents.

Professor Karl testified on 29 November 2009 that the declassified documents show that the planning of the murders was done days before the events.<sup>290</sup> Declassified documents also point to the meeting of high command military officials on November 15th and remarks made by Roberto D'Aubuisson<sup>291</sup> during separate meetings with the National Assembly and ARENA's National Executive Committee. Regarding the latter, a CIA intelligence memorandum sent the

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<sup>285</sup> The Center for Justice & Accountability, "The Jesuit Massacre Case," <http://cja.org/article.php?list=type&type=84> (Accessed December 4, 2011)

<sup>286</sup> "Case Summary: CJA's Human Rights Prosecution: The Jesuits Massacre," November 12, 2008, 12. This document is available at [http://cja.org/downloads/jesuits\\_summary.pdf](http://cja.org/downloads/jesuits_summary.pdf).

<sup>287</sup> The judge's order is available at [http://www.cja.org/downloads/Jesuits\\_Order\\_Admitting\\_Complaint.pdf](http://www.cja.org/downloads/Jesuits_Order_Admitting_Complaint.pdf)

<sup>288</sup> Kate Doyle, "The Right to Information is the Right to Justice: Declassified Documents and the Assassination of the Jesuits in El Salvador," *Unredacted: The National Security Archive, Unedited and Uncensored* (blog), November 16, 2009, <http://nsarchive.wordpress.com/2009/11/16/right-to-justice-in-el-salvador/> (Accessed December 4, 2011).

<sup>289</sup> All these documents are available through the Digital National Security Archive and can be retrieved under the subject term "Jesuit Priests Murders (16 November 1989).

<sup>290</sup> On 13 November 1989, members of the Atlacatl battalion entered the campus of the Central American University to search for weapons and guerrilla presence. They alleged to have information about guerrilla presence on campus., but nothing was found. See Comision de la Verdad para El Salvador, *De la Locura a la Esperanza: La Guerra de 12 años en El Salvador* (San Salvador, New York: United Nations, 1993): 47.

<sup>291</sup> Roberto D'Aubuisson was founder of the ARENA party and also an ultra rightist with very close ties with Salvadoran death squads. He was identified as the intellectual author behind the assassination of Monsignor Oscar Romero in 1980. At the time of the Jesuit priest murders he was president of the National Assembly.

day after the murders reports that during the meetings D'Aubuisson tried to calm down individuals at the meeting by telling them that by the next day things would be taken care of. He then began to accuse the Jesuit priests teaching at the Central American University of brainwashing students and of having links to the FMLN. He also named specifically Fathers Ellacuría, Segundo Montes and Ignacio Martin-Baro, labeling them as foreigners who wanted to obtain power in El Salvador. The memorandum concludes stating the following,

There are increasingly disturbing signs that those who executed Father Ellacuria and his fellow Jesuits were connected with elements of the extreme right... D'Aubuisson firing up his most radical followers with tales of the subversive activities of the UCA Jesuits just hours before their execution is difficult to dismiss as mere coincidence.<sup>292</sup>

An embassy cable three days after the murders reported that it had substantial evidence about D'Aubuisson's remarks. "The assassinations of Father Ellacuria and his seven companions are very possibly traceable to a discussion earlier that evening November 15th among Roberto D'Aubuisson and his most fanatical followers within the COENA," reads the cable.<sup>293</sup>

On 30 May 2011 Judge Velasco Nuñez issued the indictment and arrest warrants for the fourteen former officials and soldiers and added six new defendants.<sup>294</sup> The court order confirms the findings of the Salvadoran truth commission and other investigations regarding the planning and cover up of the murders from high-ranking military officials,<sup>295</sup> but provides more detailed information in part because of the declassified documents, "many of which were not available

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<sup>292</sup> United States. Central Intelligence Agency, "Killing of Dr. Ignacio Ellacuria," Intelligence Memorandum, November 17, 1989, 3.

<sup>293</sup> William G. Walker to United States Department of State, "Ellacuria Assassination," Secret Embassy cable, November 17, 1989, 1.

<sup>294</sup> "El Juez Velasco Procesa a 20 Militares de El Salvador por el Asesinato de Ellacuría," *El Mundo* (Spain), May 5, 2011, <http://www.elmundo.es/elmundo/2011/05/30/espana/1306759240.html> (Accessed December 4, 2011)

<sup>295</sup> Madrid, Audiencia Nacional, Juzgado Central de Instrucción Número 6, "Auto de Procesamiento," May 30, 2011, 30. The arrest warrant is available at <http://cja.org/downloads/JesuitsArrestWarrants.pdf> (Accessed December 4, 2011)

during previous investigations."<sup>296</sup> The order also calls into attention an estimated 3,000 documents still classified and which might contain additional valuable evidence to the case. It also mentions the "very unusual practice" of the reclassification of records.<sup>297</sup> "Their declassification, and the declassification of the rest of documents related to the Jesuits case, is essential," reads the court's decision.<sup>298</sup>

On 7 August 2011 nine of the indicted former military officials turned themselves in to military officials,<sup>299</sup> but on the 24th the Salvadoran Supreme Court ordered their release alleging that the authorities had not formally received an extradition request.<sup>300</sup> On 24 August, Inocente Orlando Montano, one of the former military officers indicted by Judge Velasco, was arrested by U.S. federal agents in Massachusetts and accused of making false statements on an immigration form.<sup>301</sup>

Because of the impunity that permeates in El Salvador about the prosecution of human rights abuses, victims and human rights organizations had had to rely on international law and foreign courts. Similarly, the lack of open records from military and government archives in El Salvador about the State's counterinsurgency strategy has made U.S. declassified documents significantly important. There has been no discovery of archives like in Paraguay, where the Archive of Terror opened the doors for human rights investigations throughout the Southern Cone region.

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<sup>296</sup> "Auto de Procesamiento," 51-52. Translated by Joel A. Blanco-Rivera.

<sup>297</sup> "Auto de Procesamiento," 52

<sup>298</sup> "Auto de Procesamiento," 52. Translated by Joel A. Blanco-Rivera.

<sup>299</sup> Jimena Aguilar, "Militares Acusados en España por Masacre de Jesuitas se Entregan al Ejército," *El Faro* (El Salvador), August 8, 2011, <http://www.elfaro.net/es/201108/noticias/5182/> (Accessed December 4, 2011).

<sup>300</sup> Center for Justice and Accountability, "Salvadoran Supreme Court Releases High Commanders Indicted in Spain for 1989 Jesuits Massacre," <http://www.cja.org/article.php?id=1022> (Accessed December 4, 2011).

<sup>301</sup> Mark Arsenault, "Salvadoran War Crime Suspect Arrested in Mass.," *The Boston Globe*, August 24, 2011, [http://articles.boston.com/2011-08-24/news/29923515\\_1\\_war-crime-almudena-bernabeu-jesuit-priests](http://articles.boston.com/2011-08-24/news/29923515_1_war-crime-almudena-bernabeu-jesuit-priests) (Accessed December 4, 2011).

#### 4.2.2 The Archive of Terror

Of all anti-communist dictatorships that ruled Latin America during the Cold War none lasted longer than the regime of Alfredo Stroessner in Paraguay.<sup>302</sup> Stroessner, a military officer, became President on August 1954, three months after leading a coup d'etat that ousted Federico Chávez. His regime was not completely military. He became the leader of the Colorado Party, which had been ruling the country since 1947, and established a one-party regime, easily winning every election. Stroessner ruled for 35 years, and was ousted in a coup d'etat in 1989. The Colorado Party continued its control of the government until 2008, when after 61 years in power the party was defeated in national elections. Former priest Fernando Lugo, from the center-left, was elected President of Paraguay.

In order to keep power and complete control of the political situation, Stroessner's regime established a strong persecution against the opposition, which included kidnappings and torture. The Paraguayan Truth and Justice Commission, established on 15 October 2003, documented the repression lived under Stroessner.<sup>303</sup> The commission received testimonies from over 2,000 individuals, and studied records from the Archive of Terror and information from local human rights organizations.<sup>304</sup> It was able to identify 19,862 illegal detentions, including 18,772 victims of torture, and 336 who disappeared.<sup>305</sup>

One of the victims was Martin Almada, a lawyer, educator and labor leader, who was detained in 1974 because of his stance against the regime and his work as a scholar in education.

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<sup>302</sup> For a biographical history of Alfredo Stroessner and his time in power see Anibal Miranda, *Stroessner* (Asunción, Paraguay: Ediciones Ultima Hora, 2004), and Paul F. Lewis, *Paraguay Under Stroessner* (Chapel Hill: University of North Carolina Press, 1980).

<sup>303</sup> See description at the United States Institute of Peace's Truth Commissions Digital Collection, <http://www.usip.org/publications/truth-commission-paraguay> (Accessed January 10, 2012)

<sup>304</sup> Comisión de Verdad y Justicia de Paraguay, *Informe Final: Anive Haguä Oiko* (Paraguay: CVJ, 2008), 45.

<sup>305</sup> *Informe Final: Anive Haguä Oiko*, 46.

He spent three and a half years in prison, in which he suffered torture. In 1978 he went into exile to Panama and afterwards moved to Paris and worked for UNESCO. He returned to Paraguay in 1992,<sup>306</sup> where he began to actively search for government records about his detention. As explained in chapter 3, these efforts led to the discovery of the Archive of Terror.

The custody and safety of the archives were immediately protected by efforts from human rights activists like Almada, organizations, members of the media, and Judge José Agustín Fernández, among others. Alfredo Boccia Paz, Myrian Angélica González and Rosa Palau Aguilar describe the days after the discovery,

The disorder during those first days led to the denunciation of the disappearance of some documents... Nevertheless, the leakage of documents was negligible... Since the discovery, citizen participation was fundamental. A long human chain transferred the documents to trucks that took the disorganized books and files to the Justice Palace. A vigil led by volunteers was established for various days in the Justice Palace amid fears that that documentary treasure be destroyed.<sup>307</sup>

The Archive of Terror is under the custody of the Paraguayan Center on Documentation and Archive for the Defense of Human Rights (CDyA), which is part of the Paraguayan Justice Department. The National Security Archive has collaborated with the Center since 1998.<sup>308</sup> Their collaborative projects have included two agreements of cooperation in which NSA provided technical assistance for digitization and the development and implementation of a database.<sup>309</sup> In the commemoration of the 15th anniversary of the archive's discovery, the NSA and the CDyA

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<sup>306</sup> For his testimonial see Martín Almada, *Paraguay, la cárcel olvidada: el país exiliado* (Asunción, Paraguay: Intercontinental Editora, 1993).

<sup>307</sup> Alfredo Boccia Paz, Rosa Palau Aguilar, and Osvaldo Salerno, *Paraguay: Los Archivos del Terror: Los Papeles que Resignificaron la Memoria del Stronismo* (Asunción, Paraguay: Centro de Documentación y Archivo para la Defensa de los Derechos Humanos, 2007), 31–32. Translated by Joel A. Blanco-Rivera.

<sup>308</sup> Carlos Osorio and Mariana Enamóneta, eds., "Rendition in the Southern Cone: Operation Condor Documents Revealed from Paraguayan 'Archive of Terror,'" National Security Archive Electronic Briefing Book No. 239 - Part II, December 21, 2007, <http://www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB239d/index.htm> (Accessed December 27, 2011).

<sup>309</sup> Boccia Paz, Palau Aguilar, and Salerno, *Paraguay: Los Archivos del Terror: Los Papeles que Resignificaron la Memoria del Stronismo*, 58.

launched a digital archive with over 300,000 digitized documents and 60,000 bibliographic records.<sup>310</sup>

The Archive of Terror also opened the doors for efforts of retributive justice. The most notorious was the investigation against Augusto Pinochet in Spain. With the Archive of Terror offering a strong documentary trail of the notorious Operation Condor, hundreds of files were presented at the request of Spanish judge Baltazar Garzón.<sup>311</sup> Furthermore, and as explained in Chapter 3, the arrest of General Pinochet was a critical factor in the eventual declassification of U.S. government documents.

Two local trials directly linked to Operation Condor, and which were successful for human rights advocates, took place in Uruguay and Argentina. On 9 February 2010, former Uruguayan President Juan María Bordaberry was sentenced to 30 years in prison for imposing an auto-coup in 1973, for the disappearance of nine individuals and two political assassinations committed during his tenure. In Argentina on September 2006, five former intelligence and military officers were found guilty for the illegal detention and torture of sixty-five individuals. In both cases the National Security Archive provided declassified documents. In addition, NSA analyst Carlos Osorio presented expert testimony about the declassified records and the Archive of Terror.

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<sup>310</sup> Carlos Osorio and Marianna Enamoneta, "En el 15 Aniversario del Archivo del Terror el National Security Archive Pone en Linea 60,000 de la Policía Secreta del Dictador Stroessner," National Security Archive Electronic Briefing Book No. 239 - Part I, December 21, 2007, <http://www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB239a/index.htm> (Accessed December 27, 2011). The data base is available at [http://www.aladin0.wrlc.org/gsd/collect/terror/terror\\_s.shtml](http://www.aladin0.wrlc.org/gsd/collect/terror/terror_s.shtml).

<sup>311</sup> Boccia Paz, Palau Aguilar, and Salerno, *Paraguay: Los Archivos del Terror: Los Papeles que Resignificaron la Memoria del Stronismo*, 68.

#### 4.2.2.1 Uruguay: Juan María Bordaberry

Héctor Gutiérrez Ruiz and Zelmor Michelini were two prominent Uruguayan politicians. Gutiérrez Ruiz became president of the Uruguayan parliament in 1972, while Michelini, a journalist, served as senator from 1967 to 1973.<sup>312</sup> On 27 June 1973, Uruguayan president Juan María Bordaberry, along with the military forces, imposed a self-coup, thus eliminating the legislature.<sup>313</sup> Gutiérrez Ruiz and Michelini fled into exile to Buenos Aires soon after.<sup>314</sup> On 13 September 1973 they were both awarded political asylum by the Argentine government.<sup>315</sup> From exile they became strong voices against the Uruguayan dictatorship and actively sought a political solution to the conflict.<sup>316</sup>

With the beginning of the Argentine dictatorship in 1976, the country was no longer a safe exile for both politicians, and on 18 May 1976 they became victims of Operation Condor. Zelmor Michelini was abducted from his hotel room in Buenos Aires on the early morning of May 18, while Gutiérrez Ruiz was taken from his apartment hours earlier.<sup>317</sup> Two days later they were found dead in a car along with two other victims.<sup>318</sup> The crime went unpunished for decades.

On 16 November 2002 attorneys Walter de Leon and Hebe Martínez Burlé filed two separate complaints before the Uruguayan Supreme Court of Justice.<sup>319</sup> One complaint accused

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<sup>312</sup> Claudio Trobo, *Asesinato de Estado: Quién Mató a Michelini y Gutiérrez Ruiz?* (Buenos Aires: Ediciones Colihue, 2005), 11–12.

<sup>313</sup> Trobo, *Asesinato de Estado*, 32.

<sup>314</sup> Trobo, *Asesinato de Estado*, 34.

<sup>315</sup> Trobo, *Asesinato de Estado*, 40.

<sup>316</sup> Dinges, *The Condor Years*, 146.

<sup>317</sup> Trobo, *Asesinato de Estado*, 79–86.

<sup>318</sup> Dinges, *The Condor Years*, 147.

<sup>319</sup> Walter de León, "Former President Juan María Bordaberry is Condemned to Thirty Years of Prison and 15 Years of Precautionary Detention for the Offenses of "Crimes Against the Constitution," two "Political Homicides" and the "Forced Disappearance" of Nine Citizens," <http://www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB309/Summary.pdf> (Accessed January 5 2012).

Bordaberry of committing "Crimes against the Constitution" for imposing the self-coup in 1973. This complaint, which included over 2,000 collected signatures from citizens supporting the filing, also stated that Bordaberry was one of the participants of Operation Condor, and held him responsible for several political assassinations and human rights abuses.<sup>320</sup> The second complaint accused Bordaberry and his Foreign Minister Juan Carlos Blanco as responsible for the assassinations of Michelini and Gutiérrez Ruiz.

Four years later the Uruguayan justice system acted on the second complaint. Judge Roberto Timbal ordered the arrests of Bordaberry and Blanco as co-authors of the murders.<sup>321</sup> The murders, the order states, were committed as part of Operation Condor. Judge Timbal added, "The evidence about the existence of this operation [Condor] is confirmed when on September 2001 the Department of State declassifies documents showing U.S. knowledge of the plan and its implementation."<sup>322</sup> After an appeal filed by the lawyers of Bordaberry and Blanco, the Court of Appeals upheld Judge Timbal's decision.<sup>323</sup> The ruling by ministers José Balcaldi, William Corujo and Alfredo Gómez Tedeschi expanded on the information obtained from the declassified records. It specifically cites a report sent to Henry Kissinger by Assistant Secretary of State Harry Shlaudeman in which it describes Operation Condor.<sup>324</sup> The document, released as part of the Department of State Argentina declassification project, explains that the military regimes in the Southern Cone were joining forces to eliminate what they considered to be "subversion",

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<sup>320</sup> Walter de León, "Former President Juan María Bordaberry is Condemned to Thirty Years of Prison and 15 Years of Precautionary Detention for the Offenses of "Crimes Against the Constitution."

<sup>321</sup> "La Justicia Dictó Procesamiento con Prisión por Homicidio de Ex Legisladores en 1976," Comunicado oficial de la Suprema Corte de Justicia, November 17, 2006, <http://www.derechos.org/nizkor/uruguay/doc/suprema.html> (Accessed January 3, 2012).

<sup>322</sup> "La Justicia Dictó Procesamiento con Prisión por Homicidio de Ex Legisladores en 1976." Translated by Joel A. Blanco-Rivera.

<sup>323</sup> "Justicia Culpó al Gobierno de Bordaberry por los Asesinatos," *Ultimas Noticias* (Uruguay), June 2, 2007, <http://www.ultimasnoticias.com.uy/hemeroteca/020607/prints/act08.html> (Accessed January 3, 2012)

<sup>324</sup> Poder Judicial de Uruguay. Tribunal de Apelaciones en lo Penal de Segundo Turno, Sentencia No. 136, June 1, 2007, [p. 5]. Copy provided by the National Security Archive.



including non-violent dissent. It specifically mentions Minister Blanco and his assessment of the campaign against subversion as a "Third World War."<sup>325</sup> These two topics in the declassified document are highlighted in the court's decision. The order also mentions declarations made by Carlos Osorio regarding the U.S. declassified records in the case investigating the alleged "Crimes against the Constitution."

Osorio testified before Judge Graciela Gatti on December 2006, presenting sixty documents.<sup>326</sup> On 30 March 2010 the National Security Archive posted eight of the documents, including Shlaudeman "Third World War" memo to Henry Kissinger mentioned above.<sup>327</sup> The documents also describe the political situation in Uruguay, the auto coup, and reports about illegal detentions and torture. A cable from the U.S. Embassy in Montevideo reports on a meeting between Ambassador Ernest Siracusa and President Bordaberry. During the meeting, Siracusa expressed concerns about how democratic institutions "had been to some extent sacrificed," and that the prohibition of individual liberties might affect U.S. collaboration with Uruguay.<sup>328</sup> Bordaberry responded by justifying the military's intervention as a way to provide the necessary authority to face the government's problems. According to Ambassador Siracusa, President Bordaberry stated that,

...everything they have done has really been an effort to end the stagnation of more than two decades and to save Uruguay's democratic traditions and institutions rather than do violence to them. In a sense, he said, these institutions, as they operated, were themselves the real threat to democracy in Uruguay.<sup>329</sup>

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<sup>325</sup> Harry W. Shlaudeman to Henry Kissinger, "ARA Monthly Report (July): The "Third World War" and South America," August 3, 1976, 3. Available at <http://www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB309/19760803.pdf> (Accessed January 3, 2012).

<sup>327</sup> Carlos Osorio, ed., "Bordaberry Condemned for 1973 Coup," National Security Archive Electronic Briefing Book No. 309, <http://www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB309/index.htm> (Accessed January 5, 2012).

<sup>328</sup> "Conversation with President Bordaberry," cable from Ambassador Ernest Siracusa to State Department, December 23, 1973. Available at <http://www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB309/19731226.pdf>.

<sup>329</sup> "Conversation with President Bordaberry."

On 9 February 2010, Judge Mariana Motta sentenced Juan María Bordaberry to thirty years in prison for violating the constitution, and as responsible for nine disappearances and the political assassinations of Zelmar Michelini and Héctor Gutiérrez Ruiz.<sup>330</sup> Bordaberry died of health complications on 17 July 2011 in his home while serving his sentence.

The National Security Archive's involvement with the trials in Uruguay did not go unnoticed by the Department of State, as shown in one embassy cable released by Wikileaks. Found by NSA's FOIA Coordinator Nate Jones,<sup>331</sup> the cable sent on 13 December 2006 describes the Uruguayan press coverage of Augusto Pinochet's death and the prosecution of Bordaberry and Blanco. The left in Uruguay, according to the cable, "increasingly resort to human rights as an anti-U.S. rallying cry."<sup>332</sup> Regarding the prosecution, the cable states the following,

U.S. declassified documents from the period around the Uruguay dictatorship have fueled leftist allegations that the U.S. is an enemy of human rights. Prosecutors are using declassified U.S. documents to bolster their case against Former Uruguayan President Juan Bordaberry and Former ForMin Juan Blanco.<sup>333</sup>

The cable also presents Carlos Osorio as an important witness, along with Martin Almada.

#### **4.2.2.2 Automotores Orletti**

The Argentine truth commission, CONADEP, identified 340 detention centers that operated during the military junta years (1976-1983).<sup>334</sup> One of the centers located in Buenos Aires was an old workshop with a front sign that read *Automotores Orletti* (Orletti Motors), and

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<sup>330</sup> The sentence by judge Motta is available at

<http://www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB309/Sentencia.pdf>

<sup>331</sup> See Nate Jones, "Document Friday: The National Security Archive is Named in a wikileaks Cable!" *Unredacted: The National Security Archive, Unedited and Uncensored* (Blog), December 17, 2010, <http://nsarchive.wordpress.com/2010/12/17/document-friday-the-national-security-archive-is-named-in-a-wikileaks-cable/> (Accessed January 5, 2012)

<sup>332</sup> "Left Using Human Rights to Discredit US," embassy cable, Montevideo, December 13, 2006, <http://wikileaks.ch/cable/2006/12/06MONTEVIDEO1179.html> (Accessed January 5, 2012)

<sup>333</sup> "Left Using Human Rights to Discredit US."

<sup>334</sup> Argentina. Comisión Nacional sobre la Desaparición de Personas, *Nunca Más: The Report of the Argentine National Commission on the Disappeared* (New York: Farra, Straus, Giroux, 1986): 51.

which was also known as “The Garden.”<sup>335</sup> Orletti Motors was one of the multiple detention centers in Argentina used for foreign prisoners as part of Operation Condor.<sup>336</sup> It was particularly shared with the Uruguayan military.<sup>337</sup>

On 6 September 2006, Argentine federal judge Daniel Rafecas found probable cause for 65 cases of illegal detention and ordered the preemptive imprisonment of former intelligence agents Raúl Guglielminetti and Honorio Martínez Ruiz, corlonel Rubén Visuara, general Eduardo Cabanillas and commodore Néstor Guillamondegui.<sup>338</sup> The defendants were accused of committing the crimes at Orletti Motors. Twenty-four of the 65 victims remain disappeared.<sup>339</sup> The case gained particular importance because of the detention center's ties with Operation Condor. The five defendants were found guilty and their sentences ranged from 20 years to life in prison.<sup>340</sup>

The trial began on 4 June 2010 with three judges running the procedures.<sup>341</sup> Witnesses, who totaled 83, included victims detained and tortured at Orletti,<sup>342</sup> and daughters of the disappeared who were taken away after having been born in prison and given for adoption to

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<sup>335</sup> Argentina. Comisión Nacional sobre la Desaparición de Personas, *Nunca Más*, 104 and 106.

<sup>336</sup> J. Patrice McSherry, "Operation Condor as a Hemispheric "Counterterror" Organization," in *When States Kill: Latin America, the U.S., and Technologies of Terror* (Austin: University of Texas Press., 2005), 37.

<sup>337</sup> Trobo, *Asesinato de Estado: Quién Mató a Michelini y Gutiérrez Ruiz?*, 133.

<sup>338</sup> Gabriel Sued, "Procesaron a Cinco Represores del I Cuerpo," *La Nación* (Argentina), 7 de septiembre de 2006, <http://www.lanacion.com.ar/838348-procesaron-a-cinco-represores-del-i-cuerpo> (Accessed November 9, 2011)

<sup>339</sup> "Avanza un Caso por los Crímenes del I Cuerpo," *La Nación* (Argentina), 20 de octubre de 2007, <http://www.lanacion.com.ar/954869-avanza-un-caso-por-los-crimenes-del-i-cuerpo> (Accessed November 10, 2011)

<sup>340</sup> "Les a Humanidad: Difundieron Fallo que Condenó a Cuatro Acusados por Delitos en Automotores Orletti," *Centro de Información Judicial: Agencia de Noticias del Poder Judicial*, June 1, 2011, <http://www.cij.gov.ar/nota-6923-Lesa-humanidad--difundieron-fallo-que-condeno-a-cuatro-acusados-por-delitos-en-Automotores-Orletti.html> (Accessed November 10, 2011).

<sup>341</sup> "Comenzó el Juicio por los Crímenes en Automotores Orletti," *CCD Automotores Orletti* (blog), 4 de junio de 2010, <http://automotoresorletti.blogspot.com/2010/06/comenzo-el-juicio-por-los-crimenes-en.html> (Accessed November 9, 2011)

<sup>342</sup> See Alejandra Dandan, "Ana María Salvo: Cara a Cara con Represores del Cóndor," *CCD Automotores Orletti* (blog), 15 de septiembre de 2010, <http://automotoresorletti.blogspot.com/2010/09/ana-maria-salvo-cara-cara-con.html> (Accessed November 9, 2011)

families that were sympathetic to the military junta.<sup>343</sup> Documentary evidence included records from the archives of the Argentinean Secretariat of Intelligence (SIDE), the Intelligence Department from Buenos Aires, U.S. declassified records, and from the Archive of Terror.<sup>344</sup> The National Security Archive provided the declassified documents, which are part of the Archive's Southern Cone Documentation Project. The prosecution also presented documents from the archives of CONADEP.<sup>345</sup>

Carlos Osorio took the stand on 26 November 2010 to testify on his analysis of the documents provided by the National Security Archive.<sup>346</sup> While most were U.S. declassified documents, the set also included records from other archives, including the Archive of Terror.<sup>347</sup> Osorio began by providing an overview of the National Security Archive, his work, how the declassified documents were obtained and the work of the archive with other organizations in South America.<sup>348</sup> The U.S. government records were part of the State Department's Argentina Declassification Project, which released 4,677 documents in 2002.<sup>349</sup> The National Security Archive obtained an additional 2,000 documents.<sup>350</sup>

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<sup>343</sup> See "Macarena Gelman, Declaró como testigo en el Juicio contra los Represores que Actuaron en el Centro Clandestino de Detención "Automotores Orletti," *CCD Automotores Orletti* (blog), 4 de agosto de 2010, <http://automotoresorletti.blogspot.com/2010/08/macarena-gelman-declaro-como-testigo-en.html>; "Carla Rutilo se enfrenta a Eduardo Ruffo (Agente de la Triple A)," *CCD Automotores Orletti* (blog), 23 de agosto de 2010, <http://automotoresorletti.blogspot.com/2010/08/carla-rutilo-se-enfrenta-eduardo-ruffo.html>.

<sup>344</sup> Alejandra Dandan, "El Jueves 31: Veredicto," *CCD Automotores Orletti* (blog), 28 de marzo de 2011, <http://automotoresorletti.blogspot.com/2011/03/el-jueves-31-veredicto.html> (Accessed November 9, 2011).

<sup>345</sup> Argentina. Poder Judicial de la Nación, "[Sentencia del Tribunal Oral Federal No. 1 de la Capital Federal]," May 31, 2011, 257. The court decision is available through the website of the Argentine Judiciary. See "Lesa Humanidad: Difundieron Fallo que Condenó a Cuatro Acusados por Delitos en Automotores Orletti," *Centro de Información Judicial: Agencia de Noticias del Poder Judicial*, June 1, 2011, <http://www.cij.gov.ar/nota-6923-Lesa-humanidad--difundieron-fallo-que-condeno-a-cuatro-acusados-por-delitos-en-Automotores-Orletti.html> (Accessed November 10, 2011).

<sup>346</sup> Argentina. Poder Judicial de la Nación, "[Sentencia del Tribunal Oral Federal No. 1 de la Capital Federal]," 696.

<sup>347</sup> Argentina. Poder Judicial de la Nación, "[Sentencia del Tribunal Oral Federal No. 1 de la Capital Federal]," 699.

<sup>348</sup> Argentina. Poder Judicial de la Nación, "[Sentencia del Tribunal Oral Federal No. 1 de la Capital Federal]," 696-700.

<sup>349</sup> This collection of declassified documents can be accessed electronically through the State Department's Electronic Reading Room. See <http://www.state.gov/m/a/ips/c35445.htm> (Accessed November 10, 2011).

<sup>350</sup> Argentina. Poder Judicial de la Nación, "[Sentencia del Tribunal Oral Federal No. 1 de la Capital Federal]," 698.

The initiative to declassify the State Department documents began late in the 1990s under Margaret Albright and continued under General Colin Power. The National Security Archive and the Argentine organization *Centro de Estudios Legales y Sociales* (CELS) worked together to provide the State Department a number of important cases of human rights abuses from the junta years that helped the U.S. agency in its search and identification of related records.<sup>351</sup>

Osorio's discussion of the documents centered across the structure and counterinsurgency plans of the Argentine security forces, and in particular the intelligence division. The documents also provided evidence about Operation Condor, and the participation of security agencies like SIDE and Battalion 601 in Condor operatives in Argentina and abroad. This testimony was therefore very important to establish how the security forces planned and implemented their operatives. The court's explanation of the organization of the security apparatus mentions Osorio's testimony and specific declassified documents presented to the case. His testimony, along with other testimonies and evidence demonstrated that the detention and torture of individuals were implemented following orders from high command.

In general, and in light of what we have been able to learn through the evidence about the events debated in this trial, mainly the testimony from the surviving victims of "Automotores Orletti" and from the circumstances documented on the declassified documents of the former DIPBA... and from the U.S. intelligence agencies, provided by the NGO "NSA", we can assert that the operation of the repressive apparatus implemented by the Armed Forces and the SIDE has coincided with the procedures ordered by the Commanders in the analyzed directives, orders and regulations.<sup>352</sup>

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<sup>351</sup> "State Department Open Files on Argentina's Dirty War," Press Release, August 20, 2002, <http://www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB73/> (Accessed November 10, 2011)

<sup>352</sup> Argentina. Poder Judicial de la Nación, "[Sentencia del Tribunal Oral Federal No. 1 de la Capital Federal]," 874. Translated by Joel A. Blanco-Rivera. The DIPBA (Dirección de Inteligencia de la Policía de la Provincia de Buenos Aires) was the intelligence division of the Buenos Aires Police. It operated from 1956 to 1998. On December 2000 the archives of the DIPBA were transferred to the *Comisión por la Memoria*, a commission created by law on July 2000. The archive has been open for the public since October 2003. See "El Archivo de la DIPBA," Centro de Documentación y Archivo de la Comisión Provincial por la Memoria, <http://www.comisionporlamemoria.org/archivo/> (Accessed November 10, 2011).

This evidence also showed that the intelligence services surveilled the victims before detaining them.<sup>353</sup> A document provided by the NSA corroborated testimonies from the victims that indicated that the officers administering Orletti were the same ones that participated in the kidnappings.<sup>354</sup> Carlos Osorio's testimony regarding the structure of SIDE was also valuable to the court. Osorio was able to explain how the SIDE was established and how it collaborated with military intelligence. He also showed documents from the U.S. and from the Archive of Terror that mention the detention of individuals that are named in the legal case.

The court decision describes each of the 65 cases of illegal detention for which the defendants were accused.<sup>355</sup> Fifty-six of the detentions described include references to documents provided by the National Security Archive and/or Carlos Osorio's testimony. The names of thirty-eight of the victims appear in declassified documents, therefore corroborating their detention.

The *Automotores Orletti* case provides an example of the role of the National Security Archive as a participant in the process to hold accountable perpetrators of human rights abuses. Still more important, the case shows how different archives, from different countries, become significant players in the efforts to demonstrate the planning and implementation of State's repression. These archives not only help with the prosecution of the perpetrators, but allows the court to create a historical record, documented through the judge's decision, the trial transcripts and reports.

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<sup>353</sup> Argentina. Poder Judicial de la Nación, “[Sentencia del Tribunal Oral Federal No. 1 de la Capital Federal],” 879.

<sup>354</sup> Argentina. Poder Judicial de la Nación, “[Sentencia del Tribunal Oral Federal No. 1 de la Capital Federal],” 881.

<sup>355</sup> Argentina. Poder Judicial de la Nación, “[Sentencia del Tribunal Oral Federal No. 1 de la Capital Federal],” 922-1126.

### 4.2.3 Peru: The transition from the regime of Alberto Fujimori

On the first day of the trial against former Peruvian president Alberto Fujimori, 10 December 2007, Lima's newspaper *La República* published an op-ed stating that the trial "puts an end to a long tradition of impunity" in Latin America. "The time of the Duvalier, Stroessner or Pinochet is over, and those who continue the bloody road should know that they would end up in the dock."<sup>356</sup> It was a historic day in Peru. The former president that ruled the country for ten years was facing trial for human rights abuses. Adding to this unprecedented event, Fujimori was not tried by the International Criminal Court or any other transnational court, but in Peru by the Peruvian judiciary system. On 7 April 2009 Fujimori was found guilty and sentenced to twenty-five years in prison.<sup>357</sup> The 18-month trial included testimony from former military officers involved in the human rights violations, a journalist who was captured during Fujimori's self-coup in 1992, and Vladimiro Montesinos. It also included declassified U.S. government documents as part of the documentary evidence. Kate Doyle testified over the authenticity of these documents.

Alberto Fujimori became President of Perú in 1990 and ruled until November 2000 after a series of corruption scandals forced him to resign.<sup>358</sup> His ten years rule was also marked by controversial events. On 5 April 1992 he established a self-coup, suspending the constitution, closing Congress and taking control of the judiciary. His approach to dealing with the violence coming mainly from the Maoist guerrilla *Sendero Luminoso* (Shining Path), and to a lesser

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<sup>356</sup> "Un Juicio Histórico," *La República* (Perú), December 10, 2007, <http://www.larepublica.pe/10-12-2007/un-juicio-historico> (Accessed December 5, 2011)

<sup>357</sup> "Fujimori fue Condenado a 25 Años de Prision por Crímenes de Lesa Humanidad," *Perú 21*, April 7, 2009, <http://peru21.pe/noticia/270109/juicio-alberto-fujimori-llega-hoy-su-punto-final> (Accessed December 5, 2011).

<sup>358</sup> For a complete view of Fujimori's ten-years presidency see Catherine M. Conaghan, *Fujimori's Peru: Deception in the Public Sphere*, Pitt Latin American series (Pittsburgh, PA: University of Pittsburgh Press,, 2005).

extent from the Tupac Amaru Revolutionary Movement raised flags regarding human rights abuses committed by the state. In the late 1990s, a number of high-level corruption controversies forced the fall of Fujimori. The most notable was the scandal of what became known as the "*Vladivideos*." Vladimiro Montesinos, chief of intelligence for Fujimori and the president's most powerful adviser,<sup>359</sup> recorded videotapes showing him bribing and giving money to legislators to guarantee their support of the Fujimori administration.<sup>360</sup> On 17 November 2000, Alberto Fujimori fled the country to Japan and three days later submitted his resignation as President of Peru. In November 2005, he traveled to Chile with plans to run for president at the 2006 elections, and was arrested under an extradition request by the Peruvian judiciary.<sup>361</sup> In September 2007 the Chilean Supreme Court ruled in favor of the extradition request, sending Fujimori to Peru to face justice.<sup>362</sup>

The trial of Alberto Fujimori, and the declassified records presented at the court, needs to be placed in the context of the transition that began in 2001. This transition included the establishment of the Peruvian Truth and Reconciliation Commission and a special commission established by the Peruvian Congress, called the Townsend Commission. The truth commission was responsible for investigating the history of violence during the period 1980 – 2000, while the Townsend Commission focused on the corruption scandals of Vladimiro Montesinos. The

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<sup>359</sup> Conaghan, *Fujimori's Peru*, 222. For access to U.S. declassified records on Montesinos, including his links to the United States in the 1970s, see "'Fujimori's Rasputin': The Declassified Files on Peru's Former Intelligence Chief, Vladimiro Montesinos," National Security Archive Electronic Briefing Book No. 37, <http://www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB37/> (Accessed December 6, 2011)

<sup>360</sup> The scandal began on 14 September 2000, when legislators of the opposition party *Frente Independiente Moralizador* called a press conference to show a tape of Montesinos and a congressman discussing a deal for the latter to support Fujimori's reelection. Montesinos is seen giving stacks of money to the congressman. See Conaghan, *Fujimori's Peru*, 228.

<sup>361</sup> Conaghan, *Fujimori's Peru*, 256.

<sup>362</sup> Jo-Marie Burt, "Guilty as Charged: The Trial of Former Peruvian President Alberto Fujimori for Human Rights Violations," *The International Journal of Transitional Justice* 3, no. 3 (November 2009): 395–396.



National Security Archive assisted both commissions and also became involved with the trial of president Fujimori.

#### 4.2.3.1 Townsend Commission

The origins of the Townsend Commission can be traced to the year 1997, when investigative reporters began publishing about the high amount of money Vladimiro Montesino had accumulated during his tenure as chief of intelligence.<sup>363</sup> In November 2000, three personal accounts from Montesinos totaling \$48 million were found in Sweden, and the Swedish government opened a money laundering investigation. Then, the first tapes showing Montesinos bribing legislators became public.<sup>364</sup> On 13 November 2000 the Peruvian Congress established a commission to look into the allegations. The initial findings of this commission, known as the Waisman Commission, required a more extensive investigation.<sup>365</sup> Therefore, on 13 August 2001 Congress created a new commission to investigate Montesinos and his connection with Alberto Fujimori.<sup>366</sup> Congresswoman Ana Elena Townsend was named the chair. As part of the investigation, the commission gathered 1,185,000 folios.<sup>367</sup>

The mass amount of documentation included U.S. declassified documents, specifically from the State Department.<sup>368</sup> The Townsend report indicates that the commission requested

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<sup>363</sup> Congreso de la República de Perú. *Informe Final de la Comisión Investigadora sobre la Actuación y el Origen, Movimiento y Destino de los Recursos Financieros de Vladimiro Montesinos Torres y su Evidente Relación con el ex Presidente Alberto Fujimori Fujimori* (June 2002): 5. The report is available at <http://www.congreso.gob.pe/historico/ciccor/excomi/infoanel.pdf> (Accessed December 7, 2011)

<sup>364</sup> *Informe Final de la Comisión Investigadora*, 5.

<sup>365</sup> The commission initially had just 45 days to investigate. The initial findings showed the need to expand the investigation since it identified more than 400 individuals from the bank records and there was significant documentation that was not yet studied. See Townsend report, p. 6pdf.

<sup>366</sup> *Informe Final de la Comisión Investigadora*, 6.

<sup>367</sup> The use of the term 'folio' in Latin American's archival practices is very common.

<sup>368</sup> "EE.UU. Entregó a Congreso Peruano Información sobre Montesinos," *Emol* (Chile), January 7, 2002, <http://www.emol.com/noticias/internacional/2002/01/07/75579/eeuu-entrego-a-congreso-peruano-informacion-sobre-montesinos.html> (Accessed December 7, 2011). Also see *Informe Final de la Comisión Investigadora*, 485.

documents to the State Department, which sent them documents in December 2001. The commission also requested documents from the CIA and the Department of Defense, but did not obtain them.<sup>369</sup> Soon after the release of the State Department's records, Congresswoman Townsend commended the declassification of State Department cables, but nevertheless stated the importance of obtaining documents from the CIA and the Drug Enforcement Administration. These documents, stated the Congresswoman, would have provided important information about Montesinos' relation with the DEA, among other things.<sup>370</sup>

Declassified documents from the State Department obtained through FOIA by the author of this dissertation describe the Townsend Commission's requests for the declassification of U.S. government records. A cable by Ambassador Hamilton states that the chair and vice-chair of the Townsend commission called the ambassador to ask for a faster processing of the requests.<sup>371</sup> While ambassador Hamilton explained to the commissioners that the FOIA process "at best takes many months as was the experience with Chile and some of the Central Americans,"<sup>372</sup> the White House was working to expedite the process. According to two cables from 9 January 2002, the State Department released 38 documents from 1990-2000.<sup>373</sup> After the documents were made public in January 2002, Anel Townsend made additional FOIA requests, this time to the DEA.<sup>374</sup>

The National Security Archive assisted the Townsend Commission, providing declassified documents they already obtained. The Townsend report underscores that this

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<sup>369</sup> *Informe Final de la Comisión Investigadora*, 485.

<sup>370</sup> Erika Torrejón, "Se Necesitan los Documentos de la CIA, Reclama Anel Townsend," *La Republica* (Peru), January 9, 2002, <http://www.larepublica.pe/node/143432/print> (Accessed December 7, 2011)

<sup>371</sup> John Hamilton to Secretary of State, "Towsend Commission Asks for Speed-Up of FOIA," Cable, U.S. Embassy in Lima, September 6, 2001, 1.

<sup>372</sup> Hamilton to Secretary of State, 2.

<sup>373</sup> John Hamilton to Secretary of State, "Peru Media Reaction January 8, 2002: Release of State Department Documents on Vladimiro Montesinos...", Cable, U.S. Embassy in Lima, January 9, 2002; and Hamilton to Secretary of State, "Montesinos FOIA Documents Splash," January 9, 2002.

<sup>374</sup> John Hamilton to Secretary of State, "Towsend Commission Sends Embassy DEA FOIA," January 11, 2002.

assistance helped placate the lack of records from the agencies that did not response to the FOIA requests. More specifically, the report states,

... institutions that have collaborated with the Commission of Inquiry like the non-governmental organization National Security Archive provided on 19 April 2002 a set of declassified 77 documents related to the National Intelligence Service (SIN), an additional 41 about the Cantuta massacre, and finally 99 declassified documents related to the political crisis raised by the MRTA for the hostages at the residency of the Japanese ambassador.<sup>375</sup>

While the report focused on corruption and Vladimiro Montesinos, the commission also addressed the issue of human rights abuses. More specifically, it mentions Fujimori's counterinsurgency plan, which included secret operatives such as extrajudicial executions.<sup>376</sup> These actions, and Fujimori's awareness of them, were the core of his criminal prosecution.

#### **4.2.3.2 Truth Commission**

Peru's CVR officially started its work on July 2001. Two months later, its president Salomón Lerner declared that the Commission requested the declassification of documents to the CIA about human rights violations in Peru during the period 1980-2000.<sup>377</sup> On late November of that year, Lerner met with U.S. Ambassador in Peru, John Hamilton, to talk about the request to the CIA. During that time, specifically on 27 November 2001, the Commission, assisted by the National Security Archive, officially requested to the Bush administration an expedited declassification of U.S. government documents.<sup>378</sup> As the cases of El Salvador and Guatemala had already demonstrated, time constraints would have made it basically impossible to obtain

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<sup>375</sup> *Informe Final de la Comisión Investigadora*, 486.

<sup>376</sup> *Informe Final de la Comisión Investigadora*, 232.

<sup>377</sup> "Resumenes de Prensa sobre Comisión de la Verdad Período: 11/12/2000 – 29/9/2003," APRODEH - Archivo de Prensa, Area de Documentación, p. 52 [http://www.aprodeh.org.pe/sem\\_verdad/documentos/verdad\\_2001.pdf](http://www.aprodeh.org.pe/sem_verdad/documentos/verdad_2001.pdf) (Accessed March 25, 2011).

<sup>378</sup> *The Search for Truth: The Declassified Record on Human Rights Abuses in Peru* (Washington, D.C. National Security Archive, August 28, 2003), <http://www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB96/>.

declassified documents promptly through the regular FOIA process. The outcome: on January 6, 2003 the State Department sent 320 declassified documents to the truth commission.<sup>379</sup> It was the only agency that provided documents.

How did the National Security Archive assist the Peruvian truth commission? Tamara Feinstein was director of the NSA's Peru Documentation Project during the early years of the Peruvian transition. Feinstein, who began working as a research assistant for Kate Doyle, took charge of the project and continued the work started by Doyle and Susan Peacock. During the 1998 Latin American Studies Association (LASA) conference, Peruvian human rights archivists talked with members of the National Security Archive.<sup>380</sup> Tamara Feinstein followed up with these contacts, identified specific human rights cases in Peru and began filing FOIA requests.<sup>381</sup> When the Peruvian truth commission was created, the National Security Archive started to collect available documents about human rights abuses in Peru.<sup>382</sup> Similar to the case in Guatemala, the archive worked on joint efforts with other organizations in Peru and Washington DC.<sup>383</sup> They also assisted TC's members in coordinating lobbying efforts in DC for an expedited declassification. Since the FOIA process is slow, Feinstein recognizes the value of these additional efforts:

So in this type of situation having this sort of external pressure helps so we did another sort of campaign to try to pressure for them to release information because basically the

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<sup>379</sup> Perú. Comisión de la Verdad y Reconciliación. Oficina de Comunicaciones e Impacto Público, "Comisión de la Verdad Recibió 320 Documentos Desclasificados del Gobierno Norteamericano," Nota de Prensa No. 172, <http://www.cverdad.org.pe/informacion/nprensa/notas.php?idnota=119> (Accessed March 25, 2011)

<sup>380</sup> "Peru: Human Rights, Drugs and Democracy, 1980-2000," Collection's guide, Digital National Security Archive. Available through <http://nsarchive.chadwyck.com/>

<sup>381</sup> Tamara Feinstein, phone interview with author, April 11, 2011.

<sup>382</sup> Tamara Feinstein, ed., "The Search for Truth: The Declassified Record on Human Rights Abuses in Peru," National Security Archive Electronic Briefing Book, <http://www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB96/> (Accessed December 10, 2011).

<sup>383</sup> Feinstein, phone interview with author.

truth commission had a mandate to finish the report after a certain amount of time and if the documents come late they are kind of not that useful.<sup>384</sup>

While these extra efforts have been very important to obtain documents, it is also important to recognize that the results might not be the expected. In this case, as mentioned above, the efforts led just to the declassification of 320 documents from the State Department, which was the only agency that responded to the requests. The fact that these efforts were done after September 11, 2001, and during the administration of George W. Bush, impacted the outcome.<sup>385</sup> Doyle reflected on this experience, concluding, "There were some things that were really important that came out of that process, but ultimately was a disappointment."<sup>386</sup>

Cables from the U.S. Embassy in Lima obtained by the author through a Freedom of Information Act request describe the efforts by the truth commission to obtain declassified records. A cable from 21 November 2001 explains in general what the truth commission would do, the financial support provided by USAID (approximately \$1.8 million), and the information received by the commission so far on human rights abuses, particularly from the Peruvian Human Rights Ombudsman. The cable, written by Ambassador John Hamilton, also touches on the initial efforts by the commission to obtain documents from the U.S. government. Hamilton explains that, "The Commission has contacted the National Security Archives (NSA) in Washington about their efforts through the Freedom of Information Act (FOIA), but apparently has not made a formal request for any documents from the U.S."<sup>387</sup> The cables also show that the truth commission, the Townsend commission and NGOs from the United States have been asking for the creation of an inter-agency commission that would do an expedited

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<sup>384</sup> Feinstein, phone interview with author.

<sup>385</sup> Feinstein, phone interview with author; Kate Doyle, interview with author.

<sup>386</sup> Kate Doyle, interview with author.

<sup>387</sup> John Hamilton to Secretary of State, "Truth Commission Begins Investigations," Embassy cable, November 21, 2001.

declassification of records. Ambassador Hamilton supported this idea, and proposed a model similar to the Chile Declassification Project from the Clinton administration in 1999. In a cable on 27 February 2002, he lays out his reasons,

The Truth Commission is operating under tight time constraints – a report by mid-year 2003. In order to be helpful, any information we provide should be made available no later than end of calendar year 2002. The only reasonable assurance of meeting such a timetable would be through a special declassification project.

We need to stay actively helpful in support of Peru's attempt to uncover corruption and to come to terms with its human rights-abusing past to deal with the canard that we somehow share responsibility for the abuses of the Fujimori/Montesinos years. We have done too much in support of Peruvian democracy only to lose the public relations battle by appearing to drag our feet over documents.

We are already confronting the administrative reality of FOIA file searches. In the past month alone, we have seen four requests from the Department and there are dozens more to come as we know from the TRC's most recent letter to President Bush.<sup>388</sup>

The CVR did not have any power to prosecute perpetrators of human rights abuses. However, part of its mandate included contributing to the judiciary's investigations. Indeed, in its final report, the CVR asked the Judiciary and the Attorney General's office to continue investigations, including the case files provided by the commission.<sup>389</sup> More specifically, it recommended the prosecution of 47 cases of human rights abuses.<sup>390</sup>

#### **4.2.3.3 Trial of Alberto Fujimori**

The trial against Alberto Fujimori, held by a special tribunal in Perú, began on 10 December 2007. Fujimori was specifically tried for two massacres and the illegal detentions of a journalist and a businessman. During the April 1992 self-coup, journalist Gustavo Gorriti

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<sup>388</sup> John Hamilton to Secretary of State, "President's Visit to Peru: Need for Peru Declassification Project," Embassy cable, February 27, 2002.

<sup>389</sup> *Informe Final de la Comisión de la Verdad y Reconciliación* (Peru: CVR, 2003): 46 and 107.

<sup>390</sup> Burt, "Guilty as Charged: The Trial of Former Peruvian President Alberto Fujimori for Human Rights Violations," 393.

Ellenbogen was detained and kept captive by the National Intelligence Service (SIN).<sup>391</sup> On 27 July 1992, entrepreneur Samuel Edward Dyer Ampudia was detained while awaiting a flight to Miami for a family vacation. The Peruvian truth commission concluded that Vladimiro Montesinos ordered the detention of Dyer Ampudia.<sup>392</sup>

A military unit, called the *Grupo Colina*, committed the two massacres. *Group Colina* was a special unit within the military that also worked for the intelligence services. Its role within the Fujimori government was so critical to the administration's national security policy that the truth commission included an appendix explaining the group's structure, organization and works. According to the truth commission report, *Colina* was responsible for summary executions, kidnappings, corruption and drug trafficking.<sup>393</sup> On 3 November 1991 in Barrios Altos, the Colina Group killed fifteen individuals and left four seriously wounded.<sup>394</sup> Almost eight months later, on 18 July 1992, nine students and a professor from the Universidad Nacional Enrique Guzmán y Valle (known as *La Cantuta*) were kidnapped and murdered by members of the same group. For years, the Fujimori administration, and particularly the military, hampered investigations on both cases, as described by the report of the Peruvian truth commission.

According to the charges brought against Fujimori, the former president was fully aware of the Colina Group and its actions.<sup>395</sup> Furthermore, Fujimori recommended the promotion of

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<sup>391</sup> Conaghan, *Fujimori's Peru: Deception in the Public Sphere*, 28. As a journalist, Gorriti wrote extensively about the Shining Path.

<sup>392</sup> *Informe Final de la Comisión de la Verdad y Reconciliación*, 602.

<sup>393</sup> See *Informe Final de la Comisión de la Verdad y Reconciliación*, 130- 159. Also see Umberto Jara, *Ojo por Ojo: La Verdadera Historia del Grupo Colina* (Barcelona: Grupo Editorial Norma, 2003).

<sup>394</sup> For an account of the Barrios Altos massacre see *Informe Final de la Comisión de la Verdad y Reconciliación*, 475-493.

<sup>395</sup> Corte Suprema de Justicia de la República de Perú, [*Sentencia de la Sala Penal Especial contra Alberto Fujimori*],” April 7, 2009, 20.

members of Colina and congratulated them for their work.<sup>396</sup> These actions were part of an internal strategy implemented by the Fujimori administration that consisted of the identification and elimination of alleged subversive groups. Therefore, the prosecution charged the former president as intellectual author of the massacres at Barrios Altos and La Cantuta.<sup>397</sup> Fujimori, reads the accusation, was also fully aware of the cells located at the headquarters of the SIN, and in which Gorroti and Ampudia were kept captive.<sup>398</sup>

On 7 April 2009, Alberto Fujimori was found guilty and sentenced to twenty-five years in prison. The newspaper *La República* provided the following statement in its front page: *Está Probado. Culpable de Crímenes de Lesa Humanidad* (“It is proven: Guilty of crimes against humanity”).<sup>399</sup> César Romero Calle opened the story aptly with “*Se hizo justicia. 17 años después, la verdad y la justicia se impusieron*” (“Justice has been served. Seventeen years later, truth and justice prevailed”).<sup>400</sup>

The final report with the Special Court decision by three judges is an over 700-pages long document, divided in three parts and a total of twenty-three chapters. It provides a very detailed account about the formal accusations against Fujimori, the context of the Fujimori period, the body of evidence presented in the trial and the judges’ interpretation of this evidence. The report also covers instances where documents and electronic records were destroyed by the intelligence

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<sup>396</sup> Corte Suprema de Justicia de la República de Perú, [*Sentencia de la Sala Penal Especial contra Alberto Fujimori Fujimori*],” 16-17.

<sup>397</sup> Corte Suprema de Justicia de la República de Perú, [*Sentencia de la Sala Penal Especial contra Alberto Fujimori Fujimori*],” 31.

<sup>398</sup> Corte Suprema de Justicia de la República de Perú, [*Sentencia de la Sala Penal Especial contra Alberto Fujimori Fujimori*],” 28.

<sup>399</sup> A photo of the newspaper’s front page is available online at <http://www.larepublica.pe/impresalarepublica-lima-08-04-2009> (Accessed December 10, 2011)

<sup>400</sup> César Romero Calle, “Contundente e Irrefutable,” *La República* (Perú), April 8, 2009, <http://www.larepublica.pe/09-04-2009/contundente-e-irrefutable> (Accessed December 10, 2011)



services.<sup>401</sup> One case of records destruction was brought up by one of the witnesses. He indicated that after president Fujimori announced that the intelligence service department was going to be closed, an order was given to burn documents and erase computer hard drives.<sup>402</sup> During the criminal investigation of Fujimori, prosecutors, when asking for information from the military, were also told that documents were burned.<sup>403</sup>

Included in the court sentence is the list of declassified U.S. government records presented by the prosecution, forty-nine in total,<sup>404</sup> and it describes the expert testimony of NSA Senior Analyst Kate Doyle, who testified on the authentication of the records. Doyle's role in her testimony was to authenticate the declassified documents and provide a general analysis of its content.<sup>405</sup> In her presentation at the court,<sup>406</sup> Doyle first provided some general information about the National Security Archive and her work in human rights investigations in Latin America. She also explained the Freedom of Information Act to discuss how the documents were obtained. This included a Power Point presentation showing examples of these documents. Finally, Doyle presented her analysis of the documents, its authentication and provenance. It included an explanation of what do the documents tell that was relevant to the case. The main conclusion from the documents was that they showed that the Fujimori government had a "two-face" human rights policy. When asked to provide a general analysis of the documents, Doyle explained:

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<sup>401</sup> Corte Suprema de Justicia de la República de Perú, [*Sentencia de la Sala Penal Especial contra Alberto Fujimori*], April 7, 2009, 57.

<sup>402</sup> *Sentencia de la Sala Penal Especial*, 86

<sup>403</sup> Kate Doyle, "From Silence to Memory: A Celebration of the Report of the Historical Archives of the National Police," National Security Archive Electronic Briefing Book No. 347, <http://www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB347/index2.htm> (Accessed December 10, 2011).

<sup>404</sup> The list of these documents is included in footnote 67 of the court decisional report (page 108). The report also indicates that all these records are registered at the National Security Archive.

<sup>405</sup> *Sentencia de la Sala Penal Especial*, 113.

<sup>406</sup> Video of her testimony is available through the blog of Peru's National Coordinator of Human Rights, <http://blog.dhperu.org/?p=461> (Accessed December 11, 2011).

From the documents it is fairly clear that from the perspective of the [U.S.] Ambassador and his officials, and the intelligence reports they collected during the years 90, 92, 91, 92, that the Fujimori government had a two-way, or two-face, policy: regarding human rights, on the one hand, and the fight against subversion on the other. One way, a political, according to the ambassador's analysis and the intelligence information was a public support to the respect of human rights and the rule of law within the context of the fight against subversion. According to the documents, he and his officers said it repeatedly... However, there was a secret policy, other way. And this was the clandestine strategy of fighting the insurgency aggressively without respect to the rule of law.<sup>407</sup>

One document that specifically mentions this “two-face” policy is a secret cable dated 23 August 1990 and sent by U.S. Ambassador Quainton, in which an unnamed former military officer tells the Embassy that it would support a “two-tiered anti-subversion plan.”<sup>408</sup> This plan would include a public campaign with a strong emphasis on human rights and a secret counterinsurgency program with training in extra-judicial killings.

The judges, in the decisional report, accepted Doyle’s analysis and the declassified documents as documentary evidence.<sup>409</sup> While emphasizing that the review of Fujimori’s accusation could not rely strictly on these documents,<sup>410</sup> the judges nevertheless recognized their value as reference to corroborate testimonies and other documentary evidence. The judges concluded,

The documentary value of the information is unquestionable. It consists of information that reveals communications between the U.S. embassy in Peru and the Department of State, whose access was made possible - as satisfactorily explained by the expert Katherine Doyle - in virtue of an internal process of U.S. legislation, and therefore its legality is out of the question.<sup>411</sup>

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<sup>407</sup> “Testimonio de Perito Kate Doyle en Juicio a Fujimori,” Blog de la Coordinadora Nacional de Derechos Humanos. September 18, 2008, <http://blog.dhperu.org/?p=461> (Accessed December 10, 2011). Video of Doyle’s testimony is included in the blog post. Translated by Joel A. Blanco-Rivera.

<sup>408</sup> Anthony Quainton to U.S. Department of State, “Reported Secret Annex to National Pacification/Human Rights Plan,” Cable, August 23, 1990.

<sup>409</sup> *Sentencia de la Sala Penal Especial*, 116.

<sup>410</sup> *Sentencia de la Sala Penal Especial*, 115.

<sup>411</sup> *Sentencia de la Sala Penal Especial*, 114. Translated by Joel A. Blanco-Rivera.

The declassified documents helped prove the prosecution's theory that Fujimori was an intellectual author of the crimes committed, since they documented the existence of a rigorous chain of command within the military and intelligence services. As Doyle states in her reflection of her testimony at the trial, "The U.S. documents contained important information that corroborated the testimony of various Latin American military experts who testified about command at the military."<sup>412</sup>

### 4.3 SUMMARY

The work of the National Security Archive in Latin America can be characterized by its relation to human rights. The historical period in which the National Security Archive is established coincided with the last years of the Cold War and the beginnings of transitions from dictatorships in Latin America. As explained in this chapter, the analysis of U.S. declassified government documents about the region led analysts at the archive to identify the issue of mass human rights violations committed by the State. These records filled gaps created by the lack of access to government and military archives in Latin American countries. In this chapter, this was particularly the case for El Salvador and Peru.

As shown in this chapter, the roles played by the National Security Archive have gone beyond being an archival institution that provides access to declassified government records. The Archive has become part of the networks of organizations that promote the right to know, and that seek accountability for past human rights abuses. This includes collaboration with archives

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<sup>412</sup> Doyle, "Un Testimonio Inédito de Kate Doyle, del National Security Archive. Por Qué Testifiqué Contra Dos Dictadores: Fujimori y Ríos Montt," 22.

such as the Archive of Terror, assistance to truth commissions and other human rights investigations, and participating in judicial processes.

Scott Armstrong, as explained in chapter 1, envisioned the National Security Archive as a central repository where researchers could consult already declassified documents without having to file new FOIA requests. This availability of documents in one institution has in turn been of important assistance to human rights groups and other investigators in Latin America. Furthermore, by being a non-governmental research institution, the National Security Archive has been able to actively participate in the processes to hold perpetrators accountable for human rights abuses.

## 5.0 THE WORK OF THE NATIONAL SECURITY ARCHIVE IN GUATEMALA

*The rights each and every one of us has should not be violated; because we have an identity as people, we have that right. I also hope that this is recorded in a document so that the authorities take notice of the issue and that human rights are respected.*<sup>413</sup>

The quote above is one of the many testimonies the Recovery of Historical Memory Project (REMHI) from the Archdiocese of Guatemala's Human Rights Office recorded for the study and eventual publication of the report *Guatemala Never Again!* in 1998.<sup>414</sup> The report by REMHI was followed by the report of the Historical Clarification Commission in February 1999. That same year, the National Security Archive made public what became known as the *Diario Militar*, a military logbook taken from Guatemalan military archives that documents in detail the fate of 183 individuals detained by police and intelligence forces. And in 2005 the hidden archives of the Guatemalan National Police were discovered. Mixed in this trove of documentation are thousands of declassified U.S. government records, many coming from years of intensive FOIA requests by the National Security Archive and many others coming from an expedited declassification ordered by President Bill Clinton in 1997. As a whole, these archives prevailed over attempts of denials and political maneuvering in Guatemala and the United States.

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<sup>413</sup> Testimony from a Guatemalan survivor in 1993. Cited in Proyecto Interdiocesano Recuperación de la Memoria Histórica (Guatemala), *Guatemala: Never Again!* (London: Latin America Bureau,, 1999), 86-87.

<sup>414</sup> Two days after the public release of the report, Bishop Juan Gerardi, who led the efforts for this memory project, was murdered by elements of the Guatemalan military. For an account of Bishop Girardi's assassination and the criminal investigation see Francisco Goldman, *The Art of Political Murder: Who Killed the Bishop?* (New York, NY: Grove Press,, 2007).

The history of archives in post-conflict Guatemala and the continuing struggle for accountability over past human rights abuses present an excellent case study of the role of archives in transitions from repressive regimes, and its relation to power and truth seeking initiatives. In addition, the experience in Guatemala provides an excellent example of archives as part of an international network towards the respect of human rights. Furthermore, it proves the powerful role of archival principles of provenance and custody in truth-seeking and judiciary human rights processes. The involvement of the National Security Archive in various levels that will be discussed in this chapter presents the power of archives in this context. Issues of government secrecy, authenticity of archival documents, records as evidence in the courts, and judicial and historical accountability are constantly present in this context.

This chapter examines the role of the National Security Archive in Guatemala's transition from its 36-year civil war. It explains how the NSA got involved in the different initiatives related to making archives available, in the campaigns for the mass declassification of U.S. government records, and the initiatives in Guatemala and internationally to hold perpetrators accountable in the courts. The first section will provide a general historical background of Guatemala's internal conflict and its transition. I will then explain the work of the Historical Clarification Commission and its struggles to gain access to Guatemalan government and military archives. This will be followed by an explanation of the declassification of U.S. government records, its impact on the truth commission and the roles played by the National Security Archive. The rest of the chapter looks at Guatemala after the release of the truth commission report, with a focus on the involvement of the NSA in the *Diario Militar*, the archives of the Guatemalan National Police, and legal cases.

## 5.1 GUATEMALA'S CIVIL WAR AND ITS TRANSITION

It is not within the range of this chapter to present a detailed history of the internal conflict in Guatemala. Nevertheless, it is very important to provide an overview of these developments not only to provide context, but also because the efforts to declassify government records in the United States are intrinsically related to U.S. involvement in Guatemala since the beginnings of the Cold War.<sup>415</sup> The Guatemalan Historical Clarification Commission includes in their work a historical analysis to trace the roots of violence. The first volume of the final report provides this historical context.

The CEH report explains that it is not correct to have a simplistic view of the conflict in Guatemala based solely in the Cold War.<sup>416</sup> Elements of political ideologies, significant economic inequality, identity and racism (specifically toward the indigenous population), were all factors that contributed to the conflict. Regarding the latter, the report traces the history of racism against the indigenous communities back to the invasion of Spain and the development of an ideology of "*inferioridad de los indios*" ("indians inferiority") that set the platform for the exploitation of the Mayans.<sup>417</sup> Regarding the political aspect, the report traces the more immediate causes of the conflict to 1944, a year that witnessed the fall of General Jorge Ubico and thus began a period of reforms that attempted to move away from the long history of dictatorships and towards a more democratic society.<sup>418</sup> These changes included a new Constitution in 1945 and agrarian reform implemented by President Jacobo Arbenz Guzmán in

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<sup>415</sup> While I presented a number of sources in the footnote above, I will base my description of the history of the conflict in the report from the Historical Clarification Commission.

<sup>416</sup> Comisión para el Esclarecimiento Histórico, *Guatemala Memoria del Silencio. Tomo I. Mandato y Procedimiento de Trabajo. Causas y Orígenes del Enfrentamiento Armado Interno* (Guatemala: CEH, 1999), 79.

<sup>417</sup> *Guatemala Memoria del Silencio. Tomo I*, 87.

<sup>418</sup> The period of 1944-1954 in Guatemala is commonly known as the "ten years of spring" because of the political changes and an openness to a more democratic society.

1952. While over 138,000 families benefited from the reform,<sup>419</sup> conflicts among different sectors of society emerged.<sup>420</sup> Those who felt threatened by the reform argued that these were of communist ideology, and thus it marked the beginning of the anti-communist campaign. On 27 June 1954, President Arbenz presented his resignation after a coup attempt that began nine days earlier, and in which the United States, and particularly the CIA, played a central role in its planning and implementation. Following Arbenz's resignation, a military junta was established.<sup>421</sup>

Because of the direct involvement of the U.S. government since 1954's ousting of President Arbenz, a trove of archival documents on the political history of Guatemala during the 20<sup>th</sup> century came from the walls of the CIA, the State Department and Department of Defense among others. Information from the CIA began to come to light in the early 1990s. In 1992, then CIA director Robert Gates made a statement declaring plans to release records about CIA covert operations in Iran, Italy and Guatemala, among other countries. The declassification of the documents about the overthrow of President Arbenz took place on 23 May 1997. A total of 1,400 pages and two historical papers were declassified.<sup>422</sup> However, records on CIA involvement with the overthrow of the government of Iran in 1953 were not released: they were destroyed back in the 1960s. Why did the Guatemala records survive? According to historian Nick Cullather, these records survived because of the 1982 lawsuit against the CIA by Steven Schlesinger, seeking access to the documents. The CIA won the lawsuit but was prohibited from destroying the records.<sup>423</sup>

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<sup>419</sup> *Guatemala Memoria del Silencio. Tomo I*, 102.

<sup>420</sup> The report explains that these conflicts were caused because of a still weak governmental structure, including the judiciary, the lack of understanding of the law and corruption (102-103).

<sup>421</sup> *Guatemala Memoria del Silencio. Tomo I*, 107.

<sup>422</sup> Tim Weiner, "C.I.A. Destroyed Files on 1953 Iran Coup," *The New York Times* (May 29, 1997): 19.

<sup>423</sup> See Nick Cullather, *Secret History: The CIA's Classified Account of its Operations in Guatemala, 1952-1954*, 2nd ed. (Stanford: Stanford University Press, 2006): xvi, 119-123.



The release of the records by the CIA did not mean full disclosure. Members of the National Security Archive were expecting to compare these documents with other records about Guatemala in their holdings in order to identify whether the names of individuals killed during the coup attempt appeared as targets in the CIA records. The pages with this information were heavily redacted, and therefore the names of people considered communists and close to President Arbenz were blacked out. The NSA filed additional FOIA requests and appeals but other efforts were not successful.<sup>424</sup>

### **5.1.1 Guatemala's Civil War**

The resignation of President Arbenz marked the beginning of military regimes with a strong anticommunist discourse and the implementation of the National Security Doctrine. The Constitution of 1956 allowed the President the power to expatriate communists.<sup>425</sup> The Guatemalan government also eliminated policies implemented during Arbenz's presidency, particularly the agrarian reform.<sup>426</sup> These changes and the repression against the opposition that grew during that period played a role in the emergence of guerrilla organizations during the early 1960s.<sup>427</sup> Its roots came from a failed rebellion of members of the military against the government on 13 November 1960.<sup>428</sup> On 26 February 1962, the MR-13, a guerrilla organization created by military officials from the 1960 rebellion, released a declaration with its political

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<sup>424</sup> Kate Doyle, "Hidden Archives and Human Rights Prosecutions in Latin America," presentation at the Center for Latin American Studies, University of California, Berkeley, January 27, 2011. Video recording available at <http://www.clas.berkeley.edu/Events/spring2011/01-27-11-doyle/index.html> (Accessed November 2, 2011)

<sup>425</sup> *Guatemala Memoria del Silencio. Tomo I*, 110.

<sup>426</sup> *Guatemala Memoria del Silencio. Tomo I*, 110-111.

<sup>427</sup> *Guatemala Memoria del Silencio. Tomo I*, 121-122.

<sup>428</sup> *Guatemala Memoria del Silencio. Tomo I*, 122

objectives.<sup>429</sup> The CEH established this date as the beginning of the civil war.<sup>430</sup> On December 1962 the MR-13 and two other guerrilla groups joined forces and created the Rebel Armed Forces (*Fuerzas Armadas Rebeldes*, FAR),<sup>431</sup> which lasted until the late 1970s. In 1982, guerrilla groups joined forces once again and established the Guatemalan National Revolutionary Unity (*Unidad Revolucionaria Nacional Guatemalteca*, URNG).<sup>432</sup>

#### 5.1.1.1 Scorched earth campaigns

The CEH report identifies the period between 1979 and 1985 as the most violent of the conflict.<sup>433</sup> These were the years when the governments of Generals Romero Lucas García (1978-1982) and Efraín Ríos Montt (1982-1983) implemented a scorched earth campaign in Mayan villages. The first years of the Lucas García regime included a significant increase of political murders. According to the REMHI report, the number of assassinations increased from 1,371 in 1979 to 3,426 in 1981.<sup>434</sup> In 1981, the military began a counterinsurgency campaign that targeted rural communities that were thought to be sympathetic to the guerrillas.<sup>435</sup> Alta Verapaz was one of the first areas impacted by this campaign. On 19 November 1981 the military entered Seguchil Chisec at Alta Verapaz and killed 47 people, including women and children.<sup>436</sup> This is just one example of 45 massacres committed during the period of Lucas García.<sup>437</sup>

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<sup>429</sup> *Guatemala Memoria del Silencio. Tomo I*, 124.

<sup>430</sup> Other publications state that the civil war began with the rebellion in 1960. See Balsells Tojo.

<sup>431</sup> *Guatemala Memoria del Silencio. Tomo I*, 128.

<sup>432</sup> *Guatemala Memoria del Silencio. Tomo I*, 201.

<sup>433</sup> *Guatemala Memoria del Silencio. Tomo I*, 183.

<sup>434</sup> Proyecto Interdiocesano Recuperación de la Memoria Histórica (Guatemala), *Guatemala: Never Again!*, 211.

<sup>435</sup> *Guatemala: Never Again*, 213-215.

<sup>436</sup> Comisión para el Esclarecimiento Histórico, *Guatemala Memoria del Silencio. Tomo VI: Casos Ilustrativos* (Guatemala: CEH, 1999): 25-30.

<sup>437</sup> Victoria Sanford, "Violence and Genocide in Guatemala," <http://www.yale.edu/gsp/guatemala/charts3.html> (Accessed October 25, 2011).

General Efraín Ríos Montt continued the scorched earth campaign. In June 1982 Ríos Montt, whose short time as president was characterized by his weekly TV addresses full of religious messages,<sup>438</sup> implemented a campaign called *Fusiles y Frijoles* (Rifles and Beans). The plan was to occupy villages sympathetic to the guerrillas, eliminate "subversives," and establish resettlement camps where residents were protected by the military and Civil Patrols.<sup>439</sup> By September 1982 more than 440 villages were destroyed.<sup>440</sup>

Despite efforts by the military to conceal information from its archives to the CEH, the truth commission was able to report on specific plans designed by the government to attack villages in the countryside as part of its counterinsurgency strategy. More specifically, the truth commission gained access to the files of *Plan Victoria 82*, implemented under Ríos Montt in 1982.<sup>441</sup> *Victoria 82* was the first phase of a five-phase counterinsurgency plan.<sup>442</sup> The counterinsurgency plan involved the neutralization of zones considered strongholds of the guerrilla. The military occupied the zones and controlled civic activity. This included the relocation of the displaced and the establishment of Civil Patrols (*Patrullas de Autodefensa Civil*, PAC).<sup>443</sup> The Civil Patrols, which began in 1981, were groups created by the military with men in the resettlement camps. Their main function was to provide local security to the camp and collaborate with the military.<sup>444</sup>

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<sup>438</sup> Ríos Montt was a member of the Pentecostal California-based Church of the Word. He named members of the organization to his government. See Virginia Garrard-Burnett, *Terror in the Land of the Holy Spirit: Guatemala under General Efraín Ríos Montt, 1982-1983* (Oxford: Oxford University Press, 2010).

<sup>439</sup> Garrard-Burnett, *Terror in the Land of the Holy Spirit*, 19-20.

<sup>440</sup> Garrard-Burnett, *Terror in the Land of the Holy Spirit*, 19-20.

<sup>441</sup> *Guatemala Memoria del Silencio. Tomo I*, 240.

<sup>442</sup> Jennifer G. Schirmer, *The Guatemalan Military Project: A Violence Called Democracy*, Pennsylvania studies in human rights (Philadelphia: University of Pennsylvania Press, 1998), 23-24.

<sup>443</sup> Schirmer, *The Guatemalan Military Project*, 64-65.

<sup>444</sup> *Guatemala Memoria del Silencio. Tomo I*, 200.

A counterinsurgency operation that is not described in the CEH report came to light in 2009 when the National Security Archive published the files of Operation Sofia.<sup>445</sup> The files, dated from 15 July to 19 August 1982, consist of 359 pages with directives, telegrams, maps and patrol reports documenting a plan that was implemented as part of *Victoria 82*. The plan focused on the Mayan villages in the area of Quiché.<sup>446</sup> Kate Doyle, in her analysis of the files of Operation Sofia, explains that while the documents do not explicitly report on the massacres perpetrated by military forces, the military operation took place during the period when most of the massacres were committed. Doyle further explains,

The archive... includes the initial order to launch the offensive, the Plan of Operations, messages and transmissions between units, periodical reports, and hand written reports by the patrols. This information gives us a very precise picture of the intentionality of the damage and the suffering caused by the military to Ixil's indigenous communities during the campaign to eradicate guerrilla-armed groups.<sup>447</sup>

Furthermore, the documents demonstrate how the military's chain of command functioned, and therefore, that higher-ranking military officers, including Ríos Montt, were well aware of the plan.<sup>448</sup> On 2 December 2009, Kate Doyle presented the files of Operation Sofia to Judge Santiago Pedraz as part of the Guatemalan Genocide investigation at Spain's National Court.<sup>449</sup>

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<sup>445</sup> Kate Doyle, "Operation Sofia: Documenting Genocide in Guatemala," National Security Archive Electronic Briefing Book No. 297 (December 2, 2009). <http://www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB297/index.htm> (Accessed October 25, 2011). In the 2011 documentary film *Granito: How to Nail a Dictator*, Kate Doyle explains that she received a package while in Guatemala that ended up been the files of Operation Sofia. See a clip in <http://vimeo.com/28837032> (Accessed October 16, 2011).

<sup>446</sup> See *El Plan de Operaciones Sofia, Aplicación del Plan de Campaña Victoria '82: Informe Preliminar* (Guatemala: Secretaría de la Paz, Dirección de los Archivos de la Paz, 2010).

<sup>447</sup> Kate Doyle, "Operación Sofia," [http://www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB297/report\\_doyle.pdf](http://www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB297/report_doyle.pdf) (Accessed October 25, 2011).

<sup>448</sup> Doyle, "Operación Sofia."

<sup>449</sup> Doyle, "Operation Sofia: Documenting Genocide in Guatemala." Also see Antonio Rubio, "El Ejército de Ríos Montt Mató a Más de 200,000 civiles en Guatemala entre 1978 y 1983," *El Mundo*, December 2, 2009. <http://www.elmundo.es/america/2009/12/01/noticias/1259699603.html> (Accessed October 25, 2011).

### 5.1.1.2 Intelligence and the elimination of "subversives"

Intelligence gathering was an important element of the government's plan to control the opposition and develop strategic military plans. It was also an important element for decisions involving the capture, killing and disappearance of individuals. At the military level there were three intelligence entities. The higher entity was the army intelligence, which became known as the D-2, followed by the intelligence sections in each military zone, the S-2, and the G-2 at the battalion level.<sup>450</sup> There was also an intelligence division at the Presidential General Staff (*Estado Mayor Presidencial*, EMP), where key positions were held by members of the army intelligence.<sup>451</sup> The EMP included one unit that became notorious for gross human rights violations. It was commonly known as "*El Archivo*" (The Archive).

*El Archivo* was part of the EMP since the early 1960s and it was very close to the highest levels of power in the government.<sup>452</sup> Intelligence was gathered with the recruitment of informants, called *orejas*, and infiltrating social movements and human rights groups.<sup>453</sup> *El Archivo* provided information directly to the President, and during the civilian governments that began in 1986 became a more powerful entity, obtaining more autonomy.<sup>454</sup> It participated in the detention, torture, assassination and disappearance of individuals. The *Archivo* was dissolved in 1993 by President Ramiro de León Carpio.

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<sup>450</sup> Schirmer, *The Guatemalan Military Project: A Violence Called Democracy*, 152. Schirmer's book provides a very good explanation of the military and the counterinsurgency plans during the conflict. Her research was based on interviews with fifty Guatemalan military officials, including former Presidents and Defense Ministers.

<sup>451</sup> Schirmer, *The Guatemalan Military Project*, 152.

<sup>452</sup> Proyecto Interdiocesano Recuperación de la Memoria Histórica (Guatemala), *Guatemala: Never Again!*, 107.; Comisión para el Esclarecimiento Histórico, *Guatemala Memoria del Silencio. Tomo II: Las Violaciones de los Derechos Humanos y los Hechos de Violencia* (Guatemala: CEH, 1999), 84.

<sup>453</sup> Schirmer, *The Guatemalan Military Project: A Violence Called Democracy*, 175.

<sup>454</sup> Comisión para el Esclarecimiento Histórico, *Guatemala Memoria del Silencio. Tomo II: Las Violaciones de los Derechos Humanos y los Hechos de Violencia*, 85.

### 5.1.2 The Peace Agreements

While the official ending of the conflict took place with the signing of the Peace Accords on 29 December 1996, the negotiation process took almost six years. The roots of these official negotiations date back to 7 August 1987, when the presidents of Guatemala, El Salvador, Honduras, Nicaragua and Costa Rica signed an agreement in which the governments of Central America agreed to implement a democratization process in the region.<sup>455</sup> A month later, the government of Guatemala created the National Reconciliation Commission, which follows the guidelines of the Central America's agreement. The commission included members of the government, opposition parties, the Catholic Church and a private citizen.<sup>456</sup> The commission became the initial mediator between the government and the URNG, setting up the first meeting between both parties.<sup>457</sup> The government and the URNG officially began negotiations in March 1990 with a meeting in Oslo, Norway.<sup>458</sup> On 25 July 1991, they signed the first agreement creating an agenda for the negotiations.<sup>459</sup> Eight more agreements were signed during the peace process, including the one establishing a truth commission, before the definitive peace agreement in 1996.<sup>460</sup>

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<sup>455</sup> "Acuerdo de Esquipulas II. Procedimiento para establecer la paz firme y duradera en Centroamérica" Guatemala, 7 de agosto de 1987. [http://www.guatemalaun.org/bin/documents/Esquipulas II.pdf](http://www.guatemalaun.org/bin/documents/Esquipulas%20II.pdf) (Accessed October 28, 2011)

<sup>456</sup> "Acuerdo de Creación de la Comisión Nacional de Reconciliación," Guatemala, 11 de septiembre de 1987. [http://www.guatemalaun.org/bin/documents/Comisión Nacional de Reconciliación.pdf](http://www.guatemalaun.org/bin/documents/Comisi%C3%B3n%20Nacional%20de%20Reconciliaci%C3%B3n.pdf) (Accessed October 28, 2011)

<sup>457</sup> Jeremie Armon et al., eds., *Guatemala 1983-1997: ¿Hacia Dónde va la Transición?* (Guatemala: FLACSO, 1998): 41-42.

<sup>458</sup> Armon et al., eds., *Guatemala 1983-1997*, 31. The agreement signed from this first meeting is available at [http://www.guatemalaun.org/bin/documents/Acuerdo de Oslo.pdf](http://www.guatemalaun.org/bin/documents/Acuerdo%20de%20Oslo.pdf) (Accessed October 28, 2011)

<sup>459</sup> "Acuerdo Marco para la Búsqueda de la Paz por Medios Políticos," Querétaro, México, D.C., 25 de julio de 1991. <http://www.sepaz.gob.gt/acuerdos/separador1/acuerdo-marco-para-la-busqueda-de-la-paz> (Accessed October 28, 2011)

<sup>460</sup> All the agreements are available through the website of the Government of Guatemala's Secretary for Peace, <http://www.sepaz.gob.gt/>

The peace process was influenced by a number of national and international factors, as explained by Susanne Jonas in *De Centauros y Palomas: El Proceso de Paz Guatemalteco*.<sup>461</sup> At the national level, an economic crisis and social movements emerged during the mid and late 1980s.<sup>462</sup> These social movements, Jonas explains, addressed different grievances including economic struggle, displaced communities, indigenous rights, and human rights.<sup>463</sup> In addition, despite the military's significant superiority over the URNG, both parties recognized that an end to the conflict was not possible militarily.<sup>464</sup> At the international level, the end of the Cold War, political solutions in El Salvador and Nicaragua, and the involvement of foreign countries and particularly the United Nations played an important role.<sup>465</sup> Even the United States, an active player in Guatemala's counterinsurgency planning and implementation, was involved in supporting the negotiation processes, becoming part of a group of countries dubbed the "Friends of Guatemala."<sup>466</sup>

### 5.1.3 The Historical Clarification Commission

The agreement to establish a truth commission in Guatemala was signed by the Guatemalan government and the URNG on 23 June 1994. Nevertheless, the proposals for such a commission emerged before the negotiations, more specifically by local human rights organizations like the

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<sup>461</sup> The book is also available in English. See Jonas, *Of Centaurs and Doves: Guatemala's Peace Process* (Boulder, Colo.: Westview Press, 2000).

<sup>462</sup> Susanne Jonas, *De Centauros y Palomas: El Proceso de Paz Guatemalteco* (Guatemala: FLASCO, 2000), 67–69.

<sup>463</sup> Jonas, *De Centauros y Palomas*, 69.

<sup>464</sup> Jonas, *De Centauros y Palomas*, 74.

<sup>465</sup> Jonas, *De Centauros y Palomas*, 96.

<sup>466</sup> Jonas, *De Centauros y Palomas*, 231.

*Grupo Apoyo Mutuo*.<sup>467</sup> The agreement laid out reasons to create the commission, which included the admission of grave human rights abuses, the right of the people of Guatemala to learn the truth of the conflict, and the need to establish a new social culture of peace and respect.<sup>468</sup> The tasks of this commission, called the Historical Clarification Commission, were to establish a historical record of the abuses committed during the internal conflict, provide an analysis of the causes of the conflict, and present recommendations towards reconciliation and respect of human rights, including mechanisms to preserve the memory of the victims. The agreement established that the CEH would have three members and six months to finish its investigation with the option of extending an additional six months. The two parties agreed to cooperate with any requests by the commission. Names of perpetrators were not to be published in the report. The three members selected were Professor Christian Tomuschat, Guatemalan lawyer and indigenous activist Otilia Lux de Cotí, and lawyer Edgar Alfredo Balsells Tojo. The CEH officially began its work on 31 July 1997.<sup>469</sup>

The truth commission was one of the most contentious elements of the peace process.<sup>470</sup> Both parties were not particularly supportive, but the CEH was finally created following the active role of groups from Guatemalan civil society<sup>471</sup> and pressure from countries involved in the negotiations.<sup>472</sup> One of the most controversial elements of the agreement to create the CEH

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<sup>467</sup> Richard Wilson, "Verdades Violentas: Las Políticas de Recordar el Pasado en Guatemala," in Jeremie Armon et al., eds., *Guatemala 1983-1997*, 53; Edgar Alfredo. Balsells Tojo, *Olvido o memoria : el dilema de la sociedad guatemalteca* / (Guatemala, Guatemala: F&G Editores,, 2001), 89.

<sup>468</sup> "Acuerdo sobre el Establecimiento de la Comisión para el Esclarecimiento Histórico de las Violaciones a los Derechos Humanos y los Hechos de Violencia que han Causado Sufrimientos a la Población Guatemalteca," Oslo, Noruega, 23 de junio de 1994. <http://www.sepaz.gob.gt/acuerdos/separador1/acuerdo-establecimiento-comosion-esclarecimiento-historico> (Accessed October 28, 2011)

<sup>469</sup> Comisión para el Esclarecimiento Histórico, *Guatemala Memoria del Silencio. Tomo I. Mandato y Procedimiento de Trabajo. Causas y Origenes del Enfrentamiento Armado Interno*, 24.

<sup>470</sup> Jonas, *De Centauros y Palomas: El Proceso de Paz Guatemalteco*, 98.

<sup>471</sup> Balsells Tojo, *Olvido o Memoria: El Dilema de la Sociedad Guatemalteca*, 12, 89–98.

<sup>472</sup> Jonas, *De Centauros y Palomas: El Proceso de Paz Guatemalteco*, 150.



was that perpetrators were not going to be named, a provision that the URNG and human rights organizations opposed.<sup>473</sup> Once the commission was established, the three commissioners understood that not naming names was the best approach because, among other reasons, it would have transformed the CEH into a judicial entity.<sup>474</sup> Commissioner Balsells Tojo also explained that naming names would have affected obtaining information from the parties.

... it was taken into account that the only incentive the Commission had for the Parties to collaborate providing documents and investigative materials was precisely the restriction of pointing individual responsibilities since their collaboration would have been basically nonexistent if names were to be made public.<sup>475</sup>

The CEH was structured within a central office called *Oficina de Apoyo* (Support Office), with a staff of 273 individuals from 32 countries.<sup>476</sup> The commission also established a documentation center, which collected, classified and analyzed the data. Documentation obtained by the CEH included records from local and international non-governmental organizations, from the government of Guatemala and the URNG, and declassified U.S. government documents, among others.<sup>477</sup> The commission requested information from the governments of Israel, Cuba, Argentina and Nicaragua. The request to Israel was because of its alleged collaboration in counterinsurgency training, which the government denied.<sup>478</sup> Cuba, Argentina and Nicaragua did not respond to the requests.<sup>479</sup>

The Historical Clarification Commission released its report on 25 February 1999 with a strong and very emotional presentation by its chair Christian Tomuschat. Juan Hernández Picó,

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<sup>473</sup> Balsells Tojo, *Olvido o Memoria: El Dilema de la Sociedad Guatemalteca*, 96.; Jonas, *De Centauros y Palomas: El Proceso de Paz Guatemalteco*, 150.

<sup>474</sup> Balsells Tojo, *Olvido o Memoria: El Dilema de la Sociedad Guatemalteca*, 123.

<sup>475</sup> Balsells Tojo, *Olvido o Memoria: El Dilema de la Sociedad Guatemalteca*, 124.

<sup>476</sup> Comisión para el Esclarecimiento Histórico, *Guatemala Memoria del Silencio. Tomo I. Mandato y Procedimiento de Trabajo. Causas y Orígenes del Enfrentamiento Armado Interno*, 31.

<sup>477</sup> *Guatemala Memoria del Silencio, Tomo I*, 50-51.

<sup>478</sup> *Guatemala Memoria del Silencio, Tomo I*, 51.

<sup>479</sup> *Guatemala Memoria del Silencio, Tomo I*, 51.

theologian and social scientist, witnessed the event and recalls the atmosphere at Guatemala's National Theater,

Those of us in the audience already knew of the brutality that characterized Guatemala during the war. But to hear it pronounced like a formal verdict against indescribable crimes, like some judgment of history, there in front of President Arzú, top-ranking army officers, Guatemalan human rights activists and representatives of the Guatemalan people - relatives of Mayan and ladino victims - was still quite a surprise. It was a stunning and socially momentous event.<sup>480</sup>

In its presentation, Commissioner Tomuschat highlighted the CEH's main findings. The commission concluded that the conflict resulted in more than 200,000 victims among the dead and disappeared.<sup>481</sup> The State's security forces and paramilitary groups were responsible for 93% of the abuses, while insurgents were responsible for 3%. Tomuschat also pointed to the United States' direct support of Guatemala's counterinsurgency operations and Cuba's involvement with the training of insurgents. The CEH identified the period between 1978 and 1983 as the most violent and documented 626 massacres committed by the State. The insurgency was responsible for 32 massacres. Regarding the massacres, the commission made its most powerful indictment: between 1981 and 1983 the Government of Guatemala committed acts of genocide against the Mayan population.<sup>482</sup>

Reactions to the report took place in the coming weeks. On 12 March 1999 the URNG held a press conference and issued a public apology for human rights abuses committed by the insurgency.<sup>483</sup> Four days later, the government reacted to the report with a paid advertisement in

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<sup>480</sup> Juan Hernandez Picó, "'Memory of Silence': A Stunning Indictment," *Envío*, no. 213 (April 1999), <http://www.envio.org.ni/articulo/2236>. (Accessed October 28, 2011).

<sup>481</sup> "Palabras del Sr. Christian Tomuschat, Coordinador de la CEH en ocasión de la entrega del informe de la Comisión para el Esclarecimiento Histórico," Guatemala City, February 25, 1999.

<sup>482</sup> For the CEH's analysis that led to this accusation see *Guatemala: Memoria del Silencio* Tomo II, 314-423.

<sup>483</sup> Jonas, *De Centauros y Palomas: El Proceso de Paz Guatemalteco*, 300.; Hernandez Picó, "'Memory of Silence': A Stunning Indictment."

the local newspapers.<sup>484</sup> In the statement, the government made constant references to the peace agreements and quoted President Arzú's public apology during the second anniversary of the signing of the peace accords. Regarding the findings, it stated, "the Government of the Republic considers that the Commission's historical interpretation of the armed conflict constitutes a contribution for a work that only begins and which, because of its nature, will require permanent analysis, given the complexity of the topic and its controversial character."<sup>485</sup> In June 1999, President Arzú rejected the CEH conclusion about genocide.<sup>486</sup>

President Bill Clinton, visiting Guatemala in March 1999 as part of a Central America's trip, addressed the findings of the truth commission. Taking part in a roundtable to discuss the peace efforts, President Clinton publicly apologized for the role of the United States in the conflict.

For the United States, it is important that I state clearly that support for military forces or intelligence units which engage in violent and widespread repression of the kind described in the report was wrong, and the United States must not repeat that mistake.<sup>487</sup>

In summary, the work of the Historical Clarification Commission exceeded its expectations. When it was created, there were doubts about how efficient the commission would be. Human rights organizations were particularly critical of the decision to not name individual perpetrators. There were even concerns about the appointment of the commissioners. But as Jonas explains, "no one... was prepared for the magnitude and scope of the conclusions."<sup>488</sup>

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<sup>484</sup> Picó, "'Memory of Silence'."

<sup>485</sup> "Posición inicial del Gobierno de la República ante el informe y las recomendaciones de la Comisión de Esclarecimiento Histórico," Guatemala, 16 de marzo de 1999.

<sup>486</sup> Jonas, *De Centauros y Palomas: El Proceso de Paz Guatemalteco*, 301.

<sup>487</sup> William J. Clinton, "Remarks in a Roundtable Discussion on Peace Efforts in Guatemala City, March 10, 1999," *Public Papers of the Presidents of the United States* (Washington D.C.: United States Government Printing Office, 2000): 340.

<sup>488</sup> Jonas, *De Centauros y Palomas: El Proceso de Paz Guatemalteco*, 295.

The investigative process of the CEH met a number of roadblocks. The request of information and access to government archives was particularly challenging. The next two sections will address this topic. I will first discuss the Commission's struggles to gain access to Guatemalan government and military archives. Next, I will talk about the process to request and obtain declassified U.S. government records, the role of the National Security Archive, and the impact of these documents in the work of the truth commission.

## **5.2 THE CEH AND ACCESS TO GOVERNMENT ARCHIVES**

Access to government archives was an important step toward the Commission's investigation. Yet, just like basically all truth commissions in Latin America, the CEH had to deal with constant denial and concealment by the government, and particularly the military. Christian Tomuschat underlined that cooperation from both the government and the URNG were very important in order to fulfill the commission's mission, "given that the CEH had to start from square one, without any archives or other written materials, with its main source of information being the testimonies provided by witnesses."<sup>489</sup> Tomuschat recognized that while the URNG did not answer many questions, they nevertheless were more cooperative than the government, and even recognized responsibility for human rights violations.<sup>490</sup> It was however, more difficult with the Guatemalan government.

On the whole... one may characterize the contribution made by the Government of Guatemala to the process of clarification as next to nothing. In particular, the armed forces pursued a deliberate strategy of obstruction without admitting this. Originally, the

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<sup>489</sup> Christian Tomuschat, "Clarification Commission in Guatemala," *Human Rights Quarterly* 23, no. 2 (May 2001): 249.

<sup>490</sup> Tomuschat, "Clarification Commission in Guatemala," 252.

military mainly contented that the CEH had no right to see their archives, because most of the information was classified as secret. When the CEH protested against this one-sided interpretation of its legal position, criticizing it as an attempt to frustrate the fulfillment of its mandate, the armed forces changed their strategy. They confined themselves to contending that the archives consisted of a black hole for the period under investigation by the CEH.<sup>491</sup>

This experience is reflected in numerous correspondence printed in volume 12 of the CEH final report.<sup>492</sup> These letters show the commissioners' constant requests of access to government and military archives, including requests about particular events, like massacres during the late 1970s and early 1980s.<sup>493</sup> Some of the letters also complained about restrictions to access and use of documents at the military archives. On 24 October 1997, Commissioner Tomuschat sent a letter to General Hugo Leonel Aguilar Barillas, Director of the Center for Military Studies and appointed by the Minister of Defense as the liaison between the military and the CEH in matters related to archives, complaining about the strict limitations to the use of archival documents that two investigators encountered earlier that day.<sup>494</sup> Tomuschat makes various recommendations, including the elimination of a time limit, allowing more than two investigators to see the archives, and access to original documents instead of photocopies.<sup>495</sup> Tomuschat, along with Commissioners Lux de Cotí and Balsells Tojo, also sent a letter to President Alvaro Arzú complaining about the slowness by the military and the government in requests to get access to the archives. The Commissioners specifically requested the need to get access to documents about *El Archivo*, since many testimonies mentioned the unit as responsible

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<sup>491</sup> Tomuschat, "Clarification Commission in Guatemala," 250.

<sup>492</sup> Comisión para el Esclarecimiento Histórico, *Guatemala Memoria del Silencio. Tomo XII* (Guatemala: CEH, 1999): 131-195.

<sup>493</sup> See for example Christian Tomuschat to General Héctor Mario Barrios Celada, Guatemala, 19 December 1997, in *Guatemala Memoria del Silencio. Tomo XII*, 90.

<sup>494</sup> Tomuschat to General Hugo Leonel Aguilar Barillas, Guatemala, 24 October 1997, in *Guatemala Memoria del Silencio. Tomo XII*, 62-67.

<sup>495</sup> Tomuschat to Aguilar Barillas, 64.

for human rights abuses.<sup>496</sup> The commissioners also questioned that information about human rights abuses should not have the privilege of being kept classified.<sup>497</sup> General Aguilar Barillas responded on 2 November announcing that there would be no time limit and more investigators would be allowed to see the archives.<sup>498</sup>

Still, issues about access continued. In a letter to General Hector Mario Barrios Celada, Minister of Defense, dated 18 December 1997, Commissioner Tomuschat reiterated the concerns about restrictions to the use of documents, including the prohibition of photocopying and access to information in the military zones.<sup>499</sup> Tomuschat also objected to the military's assertion that there were no records about their strategic plans before 1982. General Barrios Celada responded on 5 January 1998, indicating that all information found was already provided and that there were no additional documents in the archives.<sup>500</sup> In response to Tomuschat's concerns that information had been concealed, General Barrios Celada implied that records were not regularly created because of the circumstances of the conflict. "With all due respect," writes the General, "I will comment that perhaps the Commission has a different idea about the type of reports and their contents, and therefore is insisting in obtaining a type of documents that were never created with the regularity and specificity believed by the Commission."<sup>501</sup> Barrios Celada expanded,

Furthermore, it should not escape your criteria that many of the events the Commission investigates took place during a political context in which the philosophy and mechanisms of the National Security Doctrine and the battle against insurgency, as an expression of the Cold War in our region, resulted in totally irregular mechanisms, encouraged externally. As you may expect, this type of mechanisms escape the

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<sup>496</sup> Christian Tomuschat, Otilia Lux de Cotí and Edgar Alfredo Balsells Tojo to President Alvaro Arzú Irigoyen, Guatemala, 28 October 1997, in *Guatemala Memoria del Silencio. Tomo XII*, 70.

<sup>497</sup> Tomuschat, Lux de Cotí and Balsells Tojo to President Arzú, 72..

<sup>498</sup> General Hugo Leionel Aguilar Barillas to Christian Tomuschat, Guatemala, 2 November 1997, in *Guatemala Memoria del Silencio. Tomo XII*, 80 and 82.

<sup>499</sup> Tomuschat to Barrios Celada, Guatemala, 18 December 1997, in *Guatemala Memoria del Silencio. Tomo XII*, 88.

<sup>500</sup> General Hector Mario Barrios Celada to Christian Tomuschat, Guatemala, 5 January 1998, in *Guatemala Memoria del Silencio. Tomo XII*, 102-107.

<sup>501</sup> Barrios Celada to Tomuschat, 104. Translated by Joel A. Blanco-Rivera.

institutional control, and thus it will hardly leave documentary trail of their actions. In any event we believe it is unfair to assume that this information, if it ever exists, might be in the Military archives.<sup>502</sup>

Certainly the files of Operation Sofia contradict this statement.

Claims about the non-existence of records in the military and government archives continued throughout the Commission's investigation. Soon after the discovery of the *Diario Militar* in 1999, Commissioner Otilia Lux de Cotí recalled the frustration of not getting access to documents in the archives, and the response by the government and the military that documents of specific cases did not exist. She added,

That was always their argument. But we knew that an institution like the military that takes such pride in its history had to have more than what they were giving to us.<sup>503</sup>

The National Security Archive became involved with the CEH since its beginnings. Kate Doyle recalls the frustrations of the commission to obtain government documents from Guatemala. She states that the Guatemalan government, "stone walled the truth commission from day one right until the last day."

Anything [the CEH] got, they got because they fought tooth and nail for that little tiny concession. So everything for the military was a concession. And ultimately... it hurt the commission. It hurt the commission's ability to fairly and deeply analyze the counterinsurgency from the perspective of the military.<sup>504</sup>

This practice complicated the commission's efforts to look at evidence from the military and government archives to investigate particular events like massacres, disappearances and assassinations. Additionally, it made it more difficult for the commission to get a better understanding of the structure of the military and the planning and implementation of the counterinsurgency operations. Therefore, the CEH had to rely significantly on secondary sources

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<sup>502</sup> Barrios Celada to Tomuschat, 107. Translated to Joel A. Blanco-Rivera.

<sup>503</sup> Cited in Ginger Thompson and Mireya Navarro, "Rights Groups Say Logbook Lists Executions by Guatemalan Army," *The New York Times*, May 20, 1999, 1.

<sup>504</sup> Kate Doyle, interview by author, New York City, August 1, 2011.

and testimonies.<sup>505</sup> It is in this issue where the declassified U.S. government records had its main impact.

### **5.3 THE CEH AND THE DECLASSIFICATION OF U.S. GOVERNMENT RECORDS**

On 29 March 1968, diplomat Viron Vaky sent a memorandum to Covey Oliver, Assistant Secretary of State for Inter-American Affairs, in which he paints a terrible picture of repression in Guatemala. In the memo, Vaky regrets not being more forceful in denouncing Guatemala's counter-terror strategies while working as U.S. Deputy Chief of Mission in Guatemala. He also explains that the government counter-terror strategy is indiscriminate, brutal and has affected modernization and institution building. "The official squads are guilty of atrocities," Vaky explains. "Interrogations are brutal, torture is used and bodies are mutilated." Putting a very critical eye to the U.S. government continued support of the Guatemalan military, Vaky states,

This leads to an aspect I personally find the most disturbing of all -- that we have not been honest with ourselves. We have condoned counter-terror; we may even in effect have encouraged or blessed it.<sup>506</sup>

Almost thirty-one years later, Douglas Farah from the *Washington Post* wrote a piece about this memo. He interviewed Vaky, who said he was warned that his opinion was going to make him look as soft on communism, but still felt it was the right thing to do. Farah also wrote about the publication of the memo,

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<sup>505</sup> *The Guatemalan Military: What the U.S. Files Reveal: A report compiled by The National Security Archive* (National Security Archive, June 1, 2000), <http://www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB32/index.html>. (Accessed November 1, 2011).

<sup>506</sup> Viron Vaky to Covey T. Oliver, Secret Memorandum, Subject: "Guatemala and Counter-Terror" March 29, 1968.



Vaky's anguish might never have come to light if not for the National Security Archive, a Washington-based nonprofit group that released it Wednesday along with thousands of other U.S. documents relating to Guatemala's 36-year civil war, which ended with a U.N.-brokered peace settlement in 1996.<sup>507</sup>

Since the mid 1990s, the National Security Archive increased its efforts to obtain declassified documents about Guatemala. One collection available at the Digital National Security Archive contains over 2,000 documents. Titled "Death Squads, Guerrilla War, Covert Operations, and Genocide: Guatemala and the United States, 1954-1999," this collection describes the political developments during that period, including evidence about U.S. policy on Guatemala and its role in the removal of President Jacobo Arbenz in 1954 and with the counterinsurgency campaign against the guerrilla groups during the civil war. It also includes documents obtained from Guatemala. As the collection's guide describes, the materials "are the result of a six-year intensive effort to press for the declassification of internal U.S. files that might otherwise have remained secret."<sup>508</sup> The National Security Archive continues to request government documents through FOIA, looking for records that can help current investigations abroad against perpetrators of human rights abuses.

The publication of this collection was also part of the Guatemala Documentation Project, a NSA initiative directed by Kate Doyle, which began using FOIA between 1994 and 1995. Once the Guatemalan Historical Clarification Commission began its work in 1997, the National Security Archive shared over 5,000 pages of what they considered the more substantive records

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<sup>507</sup> Douglas Farah, "'We've Not Been Honest'; '68 Memo Assails U.S. Role in Guatemalan War," *The Washington Post*, March 12, 1999, A25.

<sup>508</sup> The guide is available at <http://nsarchive.chadwyck.com/collections/content/GU/intro.jsp> (Accessed November 2, 2011)

collected.<sup>509</sup> In addition, the NSA provided a database designed by NSA Analyst Carlos Osorio, which listed the names of the most important military units and officers, totaling almost 300.

It is important to understand the context surrounding the Guatemala project from NSA and the overall declassification of U.S. government records about Guatemala. Particular events influenced the release of the records. The following sections will address this historical period of the 1990s.

### **5.3.1 Declassification in the United States: The cases of Michael DeVine and Jennifer Harbury**

In the 1990s, two events in Guatemala involving U.S. citizens generated outrage in the United States. These were the assassination in Guatemala of U.S. citizen Michael DeVine in 1990<sup>510</sup> and the disappearance of guerrilla commander Efraín Bámaca Velásquez in 1992.<sup>511</sup> Bámaca, whose nom de guerre was Comandante Everardo, was married to U.S. citizen Jennifer Harbury. The DeVine family and Mrs. Harbury did not receive clear and complete information from the U.S. government, and particularly the State Department and the CIA regarding their respective cases. DeVine's wife and Mrs. Harbury filed separate lawsuits against the CIA requesting the declassification of records. For Harbury, the search for the truth included complaints at the Inter-

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<sup>509</sup> *The Guatemalan Military: What the U.S. Files Reveal: A report compiled by The National Security Archive.*

<sup>510</sup> Michael DeVine was living in Guatemala and was running a tourist hotel and a farm. He was murdered by members of the military on 8 June 1990. The military's high command became involved in a cover-up to paint the assassination as a common crime. See Lew Allen et al., *Report on the Guatemala Review*, President's Intelligence Oversight Board (United States, June 1996), 37–39, and Kate Doyle, *The United States and Guatemala: Counterinsurgency and Genocide, 1954-1999*, Essay (National Security Archive, n.d.).

<sup>511</sup> Bámaca was captured by the Guatemalan military in March 1992 after a firefight. The army initially stated that he died in combat, but it was later discovered that he was captured alive. See *Disappeared in Guatemala: The Case of Efraín Bámaca Velásquez* (Human Rights Watch, March 1995), <http://www.hrw.org/legacy/reports/1995/Guatemala.htm>.

American Commission for Human Rights, *habeas corpus* at the Guatemalan judiciary, and hunger strikes in front of Guatemala's National Palace and the White House in Washington.<sup>512</sup>

The scandal broke in the United States on 22 March 1995 when House Representative Robert Torricelli announced that Colonel Julio Alpírez, a Guatemalan military officer, was directly involved in the assassinations of DeVine and Bámaca. Furthermore, Torricelli indicated that Alpírez was a paid agent of the CIA.<sup>513</sup> In a letter to President Clinton, Representative Torricelli said that government agencies were well aware of the killings and those responsible but concealed information and mislead the American public.<sup>514</sup> He added,

Mr. President I request that you take the following actions in light of this disturbing information: move immediately to secure all documents, letters, and files relating to these cases in every government agency; determine if there was a deliberate attempt to mislead the Department of Justice or any other agency of the United States government; request that the Department of Justice conduct a thorough investigation of the activities of government officials involved with this issue; immediately dismiss all government employees who deliberately mislead the public about the murder of these two individuals.<sup>515</sup>

Torricelli was particularly critical of the CIA, even mentioning that the agency was "simply out of control that it contains what can only be called a criminal element."<sup>516</sup>

Admiral William O. Studeman, CIA's Acting Director, responded to the Congressman's claim, denying any wrongdoings. The allegations, stated Admiral Studeman, were completely false. The agency shared all the information they had with other agencies and with congressional intelligence oversight committees.<sup>517</sup>

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<sup>512</sup> See Jennifer K. Harbury, *Searching for Everardo: A Story of Love, War, and the CIA in Guatemala* (New York: Warner Books, 1997).

<sup>513</sup> Tim Weiner, "Guatemalan Agent of C.I.A. Tied to Killing of American," *The New York Times*, March 23, 1995.

<sup>514</sup> Robert G. Torricelli to President William J. Clinton, March 22, 1995.

<sup>515</sup> Torricelli to Clinton.

<sup>516</sup> Torricelli to Clinton.

<sup>517</sup> Statement by Admiral William O. Studeman, March 23, 1995.

During this process, the National Security Archive became involved publicly and privately. The Archive worked closely with Jennifer Harbury in her submission of FOIA requests, the appeals and other legal strategies.<sup>518</sup> Peter Kornbluh and Kate Doyle co-wrote an opinion piece for *San Jose Mercury News* and published on April 2. Like Representative Torricelli, they strongly criticized the role of U.S. agencies in supporting Guatemalan officials accused of human rights abuses. They also criticize the deliberate concealment of information to Jennifer Harbury and how following the murder of DeVine the U.S. government used covert channels to secretly continue financing the Guatemalan military. Doyle and Kornbluh also called for a number of actions, including the authorization to release all documents relevant to the cases.<sup>519</sup>

On 30 March 1995, President Clinton ordered the Intelligence Oversight Board (IOB) to conduct an investigation about the DeVine and Bámaca cases.<sup>520</sup> While the investigation was directed to focus on these two cases, the President also directed that other cases since 1984 involving U.S. citizens be reviewed. The IOB's responsibility was to determine the facts of these cases and present recommendations.<sup>521</sup> Congress also responded to the scandal. On 7 April 1995 twelve congressmen sent a letter to President Clinton requesting the review and declassification of documents about human rights violations in Guatemala. It requested, more specifically, information about the cases of seven U.S. citizens, including the assassination of DeVine, and twenty-seven additional cases. "We feel..." reads the letter, "that in light of the terrible

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<sup>518</sup> National Security Archive, "Guatemala Update. From the National Security Archive's "History and Accountability Project" in Human Rights in Guatemala," April 1995.

<sup>519</sup> Kate Doyle and Peter Kornbluh, "A National Shame: U.S. must end Silence on Guatemala Killings," *San Jose Mercury News*, April 2, 1995.

<sup>520</sup> *Public Papers of the Presidents of the United States: William J. Clinton* (Washington D.C.: United States Government Printing Office, 1995): 1004.

<sup>521</sup> The White House. Office of the Press Secretary, "Statement by the State Secretary," March 30, 1995, <http://clinton6.nara.gov/1995/03/1995-03-30-president-orders-inquiry-into-guatemala-allegations.html> (Accessed October 30, 2011)

revelations about the CIA's role in Guatemala, the United States government has the obligation to provide the most complete public accounting possible of what U.S. agencies know about human rights violations in Guatemala."<sup>522</sup> During a press conference on 18 April, President Clinton was asked about Torricelli's actions of making public information that was considered confidential. While the President stated that it was not his responsibility to judge Torricelli's actions, he mentioned the importance of the review by the IOB. "What I do believe is that the United States owes the American people a thorough investigation of the allegations of what went on," stated President Clinton.<sup>523</sup>

The IOB, chaired by Anthony S. Harrington, released its report on 18 June 1996. The investigation found that the CIA failed to consider the track record of human rights abuses by a number of their assets in Guatemala, when there was credible evidence of their responsibility for extrajudicial executions, kidnapping and torture among other abuses. The agency also failed to inform Congress about this issue.<sup>524</sup> Regarding the latter, the report concludes that the CIA misled Congress by painting a more positive picture in the agency's semi-annual reports to Congress on the efforts to improve human rights in Guatemala.<sup>525</sup> Regarding the murder of Michael DeVine, the IOB concluded there was no reliable information to confirm that Colonel Juan Alpi rez was present at the assassination. However, it concluded that Colonel Alpi rez did participate in the cover-up of the military's role in this case.<sup>526</sup> The IOB also concluded that Alpi rez took part in the interrogation of Efra n B maca, which included torture.<sup>527</sup>

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<sup>522</sup> Paul S. Sarbanes, Christopher J. Dodd et al., to William J. Clinton, April 7, 1995. Also see Christopher J. Dood press release, "Dodd requests declassification of U.S. Guatemalan records," April 7, 1995.

<sup>523</sup> "The President's News Conference: April 18, 1995," *Public Papers of the Presidents of the United States: William J. Clinton* (Washington D.C.: United States Government Printing Office, 1995): 545.

<sup>524</sup> Allen et al., *Report on the Guatemala Review*, 3.

<sup>525</sup> Allen et al., *Report on the Guatemala Review*, 6.

<sup>526</sup> Allen et al., *Report on the Guatemala Review*, 16, 39.

<sup>527</sup> Allen et al., *Report on the Guatemala Review*, 16, 41.

The IOB report was critical of the lack of significant information shared by U.S. government agencies to relatives of Michael DeVine and to Jennifer Harbury. While embassy officers met with the DeVine family, they did not share any intelligence information.<sup>528</sup> On the other hand, State Department officials shared some intelligence information with Mrs. Harbury, but provided conflicting information.<sup>529</sup>

The documents released through the two lawsuits by the DeVine family and Jennifer Harbury are currently housed at the National Security Archive.<sup>530</sup> Harbury's collection also contains additional documents related to human rights abuses in Guatemala, and letters from the human rights organization during Harbury's ordeal.<sup>531</sup> While it is not certain that a more prompt response by U.S. government agencies would have saved Bámaca's life, it is evident from the released documents that at least the CIA knew about his capture days after the event. A CIA cable dated 18 March 1992 reports the following,

On 12 March 1992, elements of the Guatemalan army captured "Everardo," the commander of the Revolutionary Organization of the People in Arms (ORPA) Luis Ixmata Battalion, one of the two ORPA combat units. The guerrilla commander was caught in an ambush near San Marcos department. Although lightly wounded in the arm he is in good physical condition, is being well treated by the army, and has been cooperating fully with his captors. The news of his capture has not been publicized.<sup>532</sup>

The CIA cable was shared with the White House and the Department of State. However, this information was not given to Harbury during her multiple meetings with the State Department and Congress.<sup>533</sup>

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<sup>528</sup> Allen et al., *Report on the Guatemala Review*, 39.

<sup>529</sup> Allen et al., *Report on the Guatemala Review*, 41.

<sup>530</sup> Harbury and DeVine Lawsuits, 1989-1996, National Security Archive, The George Washington University.

<sup>531</sup> One letter, dated 24 April 1992, is from the URNG asking then Guatemalan Human Rights Ombudsman Ramiro de León Carpio to fully investigate the fate of Efraín Bámaca.

<sup>532</sup> "Capture [excised] of Guatemalan Guerrilla Leader," CIA cable, March 18, 1992.

<sup>533</sup> Statement of Jennifer K. Harbury to Subcommittee on Government Management, Information and Technology of the Committee on Government Reform and Oversight, May 11, 1998.

<http://www.fas.org/sgp/congress/hr051198/harbury.html> (Accessed November 29, 2011)

The scandal over the disappearance of Bámaca, along with the recently created CEH, also raised concerns within the Guatemalan military. According to a secret cable from the Department of Defense, military officers gave orders to destroy incriminating evidence about any activities that might be considered illegal. In addition, the cable mentions that the military had given orders to stonewall upcoming truth commission's requests for access to archives. Investigators would not be given immediate access, rather a senior officer was to escort them and determine the reason for their visit.

Once he determines this, and provides this information to the commanding officer and the National Defense staff, they will be informed that a judge and a judicial order will be required before they will be allowed to search the installation or its archives. Even then, [redacted] continued, an unidentified clause in the Constitution will be used to prevent their gaining access to classified archives.<sup>534</sup>

While this cable is labeled as "an information report," not intelligence, and like any secret document its content should not be considered completely factual, the Historical Clarification Commission eventually did experience some of the actions described in this cable. This is particularly true with the military's repeated use of "classified information" as a reason to deny access to government documents.

### **5.3.2 U.S. declassified records, the National Security Archive and the Historical Clarification Commission**

The mid 1990s became a particularly important period in Guatemala. Peace negotiations were ongoing and agreements such as the one creating the CEH were already signed by 1995. In the United States, the scandal over the cases of Michael DeVine and Efraín Bámaca Velásquez

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<sup>534</sup> United States. Department of Defense, "The Rising Impact of the Bamaca Case on the Guatemalan Military Establishment," Secret Cable, November 24, 1994.

prompted pressure for the declassification of U.S. government records. The Clinton administration responded with the report of the IOB, accompanied by the declassification of 6,000 documents.<sup>535</sup> Within this context, the National Security Archive launched its Guatemala Documentation Project.

The project began in June 1994, the same month of the agreement to create the Guatemalan truth commission,<sup>536</sup> with the submission of a series of FOIA requests drawn from previous research. This continued through 1995 and 1995 and expanded with research at NARA, the presidential libraries of Ronald Reagan and Dwight Eisenhower, and private collections.<sup>537</sup> Following the release of the CEH report, the National Security Archive presented the findings of this project in Guatemala City on 1 June 2000.<sup>538</sup> The Guatemalan press covered the presentation of the report.<sup>539</sup> General Otto Pérez Molina, who was a member of the military during the civil war, expressed that the NSA report has "half truths and half lies."<sup>540</sup> An opinion piece in the newspaper *Prensa Libre* was not critical of the release of the report and publication of the declassified documents, yet it questioned the responsibility of past U.S. administrations. In an article aptly titled "¿Y los Gringos Qué?" ("And what about the gringos?"), Margarita Carrera argues that the Guatemalan military should feel betrayed by the U.S. government, but

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<sup>535</sup> Doyle, *The United States and Guatemala: Counterinsurgency and Genocide, 1954-1999*.

<sup>536</sup> Doyle, *The United States and Guatemala: Counterinsurgency and Genocide, 1954-1999*.

<sup>537</sup> *The Guatemalan Military: What the U.S. Files Reveal: A report compiled by The National Security Archive*.

<sup>538</sup> *The Guatemalan Military: What the U.S. Files Reveal*.

<sup>539</sup> See "Arriba experta de EE.UU., Kate Doyle," *Prensa Libre* (Guatemala, May 30, 2000), [http://www.prensalibre.com/noticias/Arriba-experta-EEUU-Kate-Doyle\\_0\\_292779119.html](http://www.prensalibre.com/noticias/Arriba-experta-EEUU-Kate-Doyle_0_292779119.html); Juan Carlos Ruiz, "Documentos son un tesoro," *Prensa Libre* (Guatemala, June 1, 2000), [http://www.prensalibre.com/noticias/Documentos-tesoro\\_0\\_292780198.html](http://www.prensalibre.com/noticias/Documentos-tesoro_0_292780198.html)

<sup>540</sup> Sam Colop, "¿Lealtad militar?," *Prensa Libre* (Guatemala, June 28, 2000), [http://www.prensalibre.com/opinion/UCHAXIKbrLealtad-militar\\_0\\_292779511.html](http://www.prensalibre.com/opinion/UCHAXIKbrLealtad-militar_0_292779511.html). (Accessed November 1, 2011). General Pérez Molina, who is currently President elect of Guatemala, wrote an opinion piece in August 2000 criticizing the REMHI and CEH reports. He argued that the investigation were bias towards the left, but also accepted that the military made a mistake by not cooperating during the CEH investigation. See Otto Pérez Molina, "La Verdad Verdadera," *Prensa Libre* (Guatemala, Agosto 2000), [http://www.prensalibre.com/opinion/ACTXUMBALbrLa-verdad-verdadera\\_0\\_293373082.html](http://www.prensalibre.com/opinion/ACTXUMBALbrLa-verdad-verdadera_0_293373082.html). (Accessed November 1, 2011).



nevertheless they asked for it by serving the U.S. interests instead of the Guatemalans. Yet, Carrera laments that the NSA report provides names of Guatemalan military officers but not of U.S. military officers or politicians.<sup>541</sup>

The declassification of records as part of the IOB report and the FOIA requests made by the NSA as part of the Guatemala Declassification Project were not the only efforts to obtain access to government records. Soon after the Historical Clarification began its work, the National Security Archive, along with public interest, human rights and religious organizations, joined forces to begin a public campaign for the declassification of documents about human rights violations in Latin America.<sup>542</sup> On 5 August 1997 *The New York Times* ran an editorial supporting the campaign. It particularly asked the CIA to declassify more documents, and particularly those related to cases in Guatemala where victims were not U.S. citizens. It also requested the declassification of documents about Honduras.<sup>543</sup> Two months later, a letter signed by individuals representing fifty organizations from the United States and Latin America was sent to President Clinton. The letter stated,

*Human rights information should not be shielded by the system of secrecy inherited from the cold war.* Such information is often a critical component to a country's struggle to promote the rule of law, end impunity and bolster reconciliation in formerly conflicted societies. As newly-democratic nations in Latin America confront their legacies of violence, your administration can strengthen its commitment to human rights by declassifying United States files on human rights abuses in the region and releasing them to the public.<sup>544</sup> (Emphasis included)

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<sup>541</sup> Margarita Carrera, "PERSISTENCIA ¿Y los gringos qué?," *Prensa Libre* (Guatemala, June 9, 2000), [http://www.prensalibre.com/opinion/PERSISTENCIAbrY-gringos\\_0\\_292780135.html](http://www.prensalibre.com/opinion/PERSISTENCIAbrY-gringos_0_292780135.html). Carrera underlines that the NSA is not a government agency and that it is not its role to release these names.

<sup>542</sup> National Security Archive, "Campaign for Declassification of Documents on Human Rights Abuses in Latin America," <http://www.gwu.edu/~nsarchiv/news/19971017.htm> (Accessed November 1, 2011)

<sup>543</sup> "History that Remains Hidden," *The New York Times* (August 5, 1997): 18.

<sup>544</sup> "Letter to President Clinton," October 8, 1997. <http://www.cnss.org/secrecy/clintonltr.html> (Accessed February 11, 2011)

As shown above, the value of the declassified records to the CEH investigation was that it particularly helped the commission understand the structure of the Guatemalan military and the counterinsurgency strategies. There was not a smoking gun, but rather a context that was very important to study in order to provide a more accurate history of the conflict. From Kate Doyle:

We found that in the U.S. archives of course we had access to all kinds of intelligence reports and detailed reports on the ways armies functioned, on how they were structured, on what officials were in the command structure, on where people were placed in the country, what kind of operations were taking place, even some times analysis of the army and human rights abuses. But... even without sort of smoking gun style documents, you had this incredibly rich resource in the Defense Intelligence Agency, in the State Department, in the CIA of intelligence, and raw intelligence and analyzed intelligence on the security forces of Latin America.<sup>545</sup>

Through the Guatemala Documentation Project, the National Security Archive provided documents to the CEH and also assisted with its analysis.<sup>546</sup> In addition, the Archive's military database was developed to address the CEH's prohibition against naming names<sup>547</sup>. The NSA agreed with the commission's rationalization about assigning individual responsibility, as explained above. However, it considered as unacceptable "the perpetuation of a protective wall of silence around the army as an institution."<sup>548</sup> This struggle to confront the wall of silence in Guatemala continued after the release of the CEH report. Of particular significance were the discovery of the Guatemalan military logbook and its publication by the National Security Archive and the discovery in 2005 of the archives of the Guatemalan National Police. Furthermore, local and international investigations began to emerge and continue today. The rest of this chapter explores these events.

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<sup>545</sup> Interview Kate Doyle.

<sup>546</sup> Kate Doyle, "The Guatemalan Military: What the U.S. Files Reveal," National Security Archive Electronic Briefing Book No. 32, June 1, 2000, <http://www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB32/index.html>.

<sup>547</sup> Doyle, "The Guatemalan Military."

<sup>548</sup> Doyle, "The Guatemalan Military."

## 5.4 THE MYRNA MACK CASE

Myrna Elizabeth Mack Chang was a Guatemalan anthropologist and one of the founders in 1986 of the *Asociación Para el Avanze de las Ciencias Sociales* (AVANCSO).<sup>549</sup> Her research focused on the study of the displaced indigenous populations in the country and the policies implemented by the government.<sup>550</sup> Her findings, which concluded that the displaced were treated as political prisoners, were published in January 1990 by AVANCSO.<sup>551</sup> Myrna Mack was murdered on 11 September 1990. On 12 February 1993, Noel de Jesús Beteta Alvarez was sentenced to twenty-five years in prison for the assassination of Myrna Mack.<sup>552</sup> Beteta Alvarez was a member of the Presidential Guard (*Estado Mayor Presidencial*) and its intelligence unit called the "*Archivo*."<sup>553</sup>

Helen Mack, Myrna's sister and founder of the Myrna Mack Foundation, actively sought the criminal prosecution of both the material and intellectual authors of the crime.<sup>554</sup> As a private prosecutor in the trial of Beteta Alvarez, Helen Mack requested the case remain open for the prosecution of three military officers, Edgar Augusto Godoy Gaitan, Juan Valencia Osorio y Juan Guillermo Oliva, identified as the intellectual authors. The court denied the request,<sup>555</sup> but it

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<sup>549</sup> CEH report, 236. Also see "Myrna Mack," in *Fieldwork Under Fire*

<sup>550</sup> Comisión para el Esclarecimiento Histórico, *Guatemala Memoria del Silencio. Tomo VI*, 236.

<sup>551</sup> Myrna Mack, "Política Institucional hacia el Desplazado Interno en Guatemala," *AVANCSO Cuadernos de Investigación*, no. 6 (1990)

<sup>552</sup> Guatemala. Juzgado Tercero de Primera Instancia Penal, "Sentencia condenatoria contral Noel de Jesús Beteta Alvarez en primera instancia," 12 de febrero de 1993. Available at <http://www.myrnamack.org.gt/index.php/casomyrnamack/procesonacional/sentencias19932004> (Accessed November 2, 2011)

<sup>553</sup> Kate Doyle, ed., "Dear Mr. President: Lessons on Justice from Guatemala," National Security Archive Electronic Briefing Book No. 111, February 4, 2004. <http://www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB111/index.htm> (Accessed November 3, 2011)

<sup>554</sup> She brought the case not only to the Guatemalan courts but also to the Inter-American Human Rights Commission. See Sophia. Lynn, *The Myrna Mack Case: An Update* (National Academy Press., 1998), 6.

<sup>555</sup> Guatemala. Juzgado Tercero de Primera Instancia Penal, "Sentencia condenatoria contral Noel de Jesús Beteta Alvarez en primera instancia," [32]

was over-ruled by the Supreme Court on 9 February 1994.<sup>556</sup> Almost twelve years after the murder of Myrna Mack, on 3 September 2002, the three officers were on trial facing charges of murder. A month later, Colonel Juan Valencia Osorio was found guilty and sentenced to 30 years in prison, while General Augusto Godoy Gaitan and Colonel Juan Guillermo Olive were acquitted.<sup>557</sup>

#### 5.4.1 The National Security Archive and the Myrna Mack case

Helen Mack's efforts to bring the perpetrators to justice included requests for U.S. government documents. In 1995, the Lawyers Committee for Human Rights filed requests for declassified records on behalf of Mrs. Mack.<sup>558</sup> The expedited declassification of documents by the Clinton administration in 1996 included information about the Myrna Mack case, but a number of these documents were heavily redacted, thus providing scant new evidence of the event.<sup>559</sup> Yet, seeing as a whole, the declassified documents about Guatemala provided an important context regarding the structure of the military and its very strict chain of command. As in other cases that will be discussed in this chapter, this brought an important value to the body of evidence presented in the trial against the alleged intellectual author of the murder of Myrna Mack. By the time of this trial the National Security Archive's Guatemala Documentation Project had already published its

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<sup>556</sup> Guatemala. Corte Suprema de Justicia, "Casación de la sentencia de primera instancia ante la Corte Suprema de Justicia," 9 de febrero 1994. Available at <http://www.myrnamack.org.gt/index.php/casomyrnamack/procesonacional/sentencias19932004> (Accessed November 3, 2011)

<sup>557</sup> Torsten N. Wiesel and Carol Corillon, eds., *Guatemala: Human Rights and the Myrna Mack Case* (Washington D.C.: National Academies Press, 2003): 14. Court decision is available at <http://www.derechos.org/nizkor/guatemala/doc/myrnasent.html> (Accessed November 3, 2011)

<sup>558</sup> Lynn, *The Myrna Mack Case: An Update*, 6. The Lawyers Committee for Human Rights is now known as Human Rights First. See <http://www.humanrightsfirst.org/>

<sup>559</sup> Lynn, *The Myrna Mack Case: An Update*, 6.

collection. Documents from this collection were incorporated as evidence for the case. It was also Kate Doyle's first time as an expert witness for a human rights trial.<sup>560</sup>

Doyle's main role as an expert witness was to show through the declassified records how the Guatemalan military and police services functioned during the conflict and that the human rights abuses were part of an institutional policy. In her statement, Doyle explained that the documents show "periods of extreme, wide violence during the civil war." She expanded:

The documents are absolutely certain about the role of the Guatemalan military and the police force as perpetrators of these violations, they are equally clear about the State's deliberated use of terror as part of its policy and counterinsurgency strategy. The documents identify different historic moments, for example, when the violence emerged during the campaign against the guerrilla in 1967 and 1968, the wave of violence under Lucas García and the massacres equally perpetrated, but made more carefully, by Ríos Montt, the campaign of urban terror under Mejía Vítores and the selective use of violence implemented by the government during the regimes of civil Presidents Cerezo and Serrano.<sup>561</sup>

The value of this set of documents was to prove that there was evidence of a systematic strategy by the State to crackdown the opposition, which not only included the guerrilla, but also students, journalists and researchers like Myrna Mack. It was also to prove the security forces' very strict chain of command.<sup>562</sup> Kate Doyle also mentioned the *Diario Militar* as an example of the relation between different levels of the military and how the information added with significant details in these types of military documents.<sup>563</sup>

One particular document was brought during the prosecution's examination of Kate Doyle. It is a secret cable obtained by the National Security Archive titled "Selective Violence Paralyzes the Left," and written by Ambassador Thomas F. Stroock on 10 May 1991.

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<sup>560</sup> Kate Doyle, interview by author, New York City, August 1, 2011.

<sup>561</sup> Guatemala. Tribunal Tercero de Sentencia Penal, "Declaracion de Katerine Temple Lapsley Doyle, en calidad de perito, ante el Tribuna Tercero de Sentencia Penal," 12 de septiembre de 2002, <http://www.derechos.org/nizkor/guatemala/myrna/kdoyle.html> (Accessed November 3, 2011).

<sup>562</sup> Guatemala. Tribunal Tercero de Sentencia Penal, "Declaracion de Katerine Temple Lapsley Doyle, en calidad de perito, ante el Tribuna Tercero de Sentencia Penal."

<sup>563</sup> Guatemala. Tribunal Tercero de Sentencia Penal, "Declaracion de Katerine Temple Lapsley Doyle."

Ambassador Stroock describes an increase of targeted assassinations believed to be for political reasons. The assassination of Myrna Mack is mentioned as a possible example of this "selective violence."<sup>564</sup> While Ambassador Stroock asserts the difficulty of establishing with certainty who ordered and carried out the assassinations, he nevertheless stated that the way these assassinations were carried out point toward members of the security forces, including military intelligence, D2, and the presidential security (EMP).<sup>565</sup> The structure and functioning of the EMP, and particularly "*El Archivo*," was a significant topic during the examination of Kate Doyle. The declassified documents, Doyle explained, show that *El Archivo* was notorious among U.S. government officials, even to the point where there were calls to dismantle it.<sup>566</sup> Early in the 1990s, U.S. officials asked President Ramiro de Leon Carpio to eliminate *El Archivo* because of its track record of human rights violations.<sup>567</sup>

The questions from the defendants' lawyers focused on the veracity of the information, the reasons for the declassification of the documents and the redacted sections. Doyle was asked if the information in the documents was checked by a U.S. legal entity, for which she answered no, that the validation given by the U.S. government is about their authenticity.<sup>568</sup> Doyle also explained that she was able to analyze the contents of the records by studying other primary and

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<sup>564</sup> Thomas F. Strook, "Selective Violence Paralyzes the Left," secret cable, May 10, 1991, 2 and 4.

<sup>565</sup> Strook, "Selective Violence Paralyzes the Left," 4.

<sup>566</sup> Guatemala. Tribunal Tercero de Sentencia Penal, "Declaracion de Katerine Temple Lapsley Doyle..."

<sup>567</sup> While the transcript of Doyle's testimony does not mention the specific declassified document(s), I found five documents through the Digital National Security Archive that addresses this issue. The cables from the U.S. Embassy in Guatemala reports on meetings of U.S. Ambassador Marilyn McAfee with the Guatemalan Minister of Defense and President Ramiro de Leon Carpio. The conversations, which took place between late June and mid July 1993, included requests by the Guatemalan military to restore U.S. assistance, while Ambassador McAfee stressed the need for significant reform. The Ambassador particularly mentioned the track record of the "Archivos" intelligence unit, including the suspicion of its involvement in the assassination of Myrna Mack. On 8 August 1993, President de Leon Carpio announced the elimination of the "Archivos." See: "Ambassador Calls on MOD and Discusses Topics Surrounding Military-to-Military Relationships," Confidential cable, June 29, 1993; "Ambassador Meets with Guatemala's Newest MOD," Confidential cable, July 7, 1993; "Military Assistance for Guatemala," Confidential cable, July 12, 1993; "Changes Coming on Human Rights," Confidential cable, July 13, 1993; "President Announces Restructuring of His "Estado Mayor", " Confidential cable, August 9, 1993.

<sup>568</sup> Guatemala. Tribunal Tercero de Sentencia Penal, "Declaracion de Katerine Temple Lapsley Doyle."

secondary sources and interviews.<sup>569</sup> She was also asked if the declassification of the documents was a strategy by the U.S. government to affect the criminal case. Doyle answered that question by explaining the Freedom of Information Act.<sup>570</sup>

The court decision validated Doyle's testimony and the declassified documents. It accepted Doyle's assessment about the structure and chain of command of the Guatemalan military and the pattern of selective violence during the period of Myrna Mack's assassination. The documents show how the Department of Defense and the CIA actively assisted with the design of the counterinsurgency program implemented by the Guatemalan security forces. The decision also explains,

The documents are full of names of different entities from the Guatemalan government dedicated to intelligence operations, mentioning the D2, the G2 from the military zones, the F2 at the operative levels, and what is called *El Archivo*.<sup>571</sup>

## **5.5 THE NATIONAL SECURITY ARCHIVE AND ARCHIVES OF REPRESSION IN GUATEMALA: THE *DIARIO MILITAR* AND THE ARCHIVES OF THE GUATEMALAN NATIONAL POLICE**

On 20 May 1999 representatives from the National Security Archive, the American Association for the Advancement of Science, the Washington Office on Latin America and Human Rights Watch held a press conference at the National Press Club to present the *Diario Militar*, a military dossier from Guatemala that documents in detail the detention and disappearance of 183

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<sup>569</sup> Guatemala. Tribunal Tercero de Sentencia Penal, "Declaracion de Katerine Temple Lapsley Doyle."

<sup>570</sup> Guatemala. Tribunal Tercero de Sentencia Penal, "Declaracion de Katerine Temple Lapsley Doyle."

<sup>571</sup> Guatemala. Tribunal Tercero de Sentencia Penal, "Texto completo de la sentencia del Tribunal Tercero en el Caso de Myrna Mack," 3 de octubre de 2002, <http://www.derechos.org/nizkor/guatemala/doc/myrnasent.html> (Accessed November 3, 2011). Also available at <http://www.myrnamack.org.gt/index.php/casomyrnack/procesonacional/sentencias19932004>.

victims.<sup>572</sup> It was a breakthrough in the efforts to gain access to documents that might provide evidence of past atrocities by the State. Ironically, this discovery took place soon after the release of the report of the Guatemalan Historical Commission, which concluded that the State committed an act of genocide against the Mayan populations during the 36-year conflict. During its investigative work, the Commission faced constant blocking by the military and national police to gain access to their archives. Furthermore, responses to requests of information were normally that records did not exist.

Six years later, staff of the Guatemalan Human Rights Ombudsman Office discovered the archives of the National Police, over 80,000 records dating back to the 19th century that documents the institution's history. The aftermath of the discovery of the military log and the police archives has been significant, and it will be the focus of the rest of the chapter. The Guatemalan government eventually accepted the authenticity of the *Diario Militar*, but despite promises, was not forthcoming in prosecuting those responsible for the abuses documented in the log. This led to a legal complaint filed at the Inter-American Human Rights Commission in 2005, with the commission sending the case to the Inter-American Court of Human Rights on February 2011. In 2010, a Guatemalan court finally saw a case related to a kidnapping reported in the *Diario Militar*, the disappearance of Edgar Fernando García, sentencing two former officials to forty years in prison. The evidence in this case was driven by hundreds of records identified at the archives of the National Police.

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<sup>572</sup> "Guatemalan Death Squad Dossier: Internal Military Log Reveals Fate of 183 "Disappeared"," National Security Archive Electronic Briefing Book No. 15, May 20, 1999, <http://www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB15/press.html> (Accessed November 3, 2011). The digitized version of the military logbook is available at <http://www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB15/dossier-color.pdf>



The story of the *Diario Militar* also puts into perspective the convergence of different types of archives and their role with assuring the authenticity of the document, the veracity of the information contained, and the sustainability of the evidence in a legal setting. Two types have been of particular significance: the U.S. declassified records obtained by the National Security Archive and by the expedited declassification ordered by President Clinton in the mid-late 1990s, and the archives of the Guatemalan National Police.

This section will be divided in four main parts. First, it describes the discovery of the *Diario Militar*, its content and the immediate reaction to it. The archives of the National Police will be explained next. Third, it explains the consequences of the release of this military logbook and the police archives, with a focus on the legal case at the Inter-American Human Rights Commission, and the Fernando García case. Finally, this section will explain how the convergence of different archives played a role in these events.

### **5.5.1 The *Diario Militar***

On 25 February 1999 the Guatemalan Historical Clarification Commission released its final report. One of the main problems the commission faced was the lack of forthcoming assistance from the Guatemalan government, and particularly the military and the national police. Requests for information were commonly received with responses indicating that there were no records at all. For those instances where members of the commission gained access, restrictions were included, as shown in the selection of letters included in the report. This was an experience similar to what other truth commissions in Latin America faced. While in Guatemala for the

publication of the CEH report, Kate Doyle saw for the first time a copy of the *Diario Militar*.<sup>573</sup>

Looking at this document, Doyle reflects, "was so exciting on the one hand, but also infuriating on the other because the truth commission had tried, really quite aggressively and loudly to get their hands on the records of the police and the military."<sup>574</sup> She further explains:

So to have this thing, to get this phone call and to meet these people and to look at this artifact of this violent police force in the very same week when the truth commission is standing in front of an audience of thousands of people saying, Commissioners Tomushat said, 'you had stopped us from being able to do our job by blocking access to those records.' And the government maintained throughout that the kind of records that the commission wanted didn't exist, they didn't have them. You know and if they had them they were protected by national security, whatever that may be. But then you look at the *Diario Militar*, this is not something one would ever protect for quote unquote national security reasons. This is a death squad logbook. So I think to talk about the *Diario Militar* it's really important to understand the context in which that particular moment in which it was released.<sup>575</sup>

Human rights groups bought the *Diario Militar* for \$2,000.<sup>576</sup>

News reports from the days following the publication of the military logbook do not show any immediate reaction from the Guatemalan government denying the authenticity of the document. Guatemalan newspaper *Prensa Libre* reported that the *Grupo Apoyo Mutuo* (Mutual Support Group), a human rights organization in Guatemala, confirmed that the *Diario Militar* includes information about individuals from whom they have been seeking information from the authorities.<sup>577</sup> *The New York Times* reported that Guatemalan government officials did not questioned the authenticity of the document, but argued it was not the type of record that could be in the military archives.<sup>578</sup>

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<sup>573</sup> Kate Doyle, interview by author, New York City, August 1, 2011.

<sup>574</sup> Doyle, interview by author.

<sup>575</sup> Doyle, interview by author.

<sup>576</sup> *La Autenticidad del Diario Militar, A la Luz de los Documentos Históricos de la Policía Nacional* (Guatemala: Direccion de los Archivos de la Paz. Secretaria de la Paz., 2010), 21.

<sup>577</sup> "Military Document Reveals List of Illegal Executions," *BBC Summary of World Broadcasts*, May 24, 1999.

<sup>578</sup> Thompson and Navarro, "Rights Groups Say Logbook Lists Executions by Guatemalan Army," 1.

The *Diario Militar* is 74-pages long. Although it doesn't provide a clear organization (no title page, table of contents) those who studied it identified six main sections.<sup>579</sup> The first section contains eleven lists of individuals that, according to the logbook were already dealt with ("*elementos ya trabajados*"). The second section contains information about the belongings found at a house that was intervened. The third section, which has "*Apoyo Mutuo*" (mutual support) handwritten at the top right of its first page,<sup>580</sup> lists twenty individuals, their relation with organizations, and in ten of them information about the date he/she was kidnapped. The fourth section provides information about different organizations, including guerrilla groups and other groups that the document identifies as fronts or supporters of the guerrilla. The fifth section lists in chronological order events from January to June 1984 related to the seizure of documentation, arms and other materials from subversives. The final section contains information about 183 individuals detained by the security forces.

This last section is the most significant of the document. For each individual, there is information about his/her involvement with an organization and details regarding the individual's detention by security forces. A picture of most of the victims is included, and there are several handwritten notes. Many of these handwritten notes have the number '300', which means that the person was executed.<sup>581</sup>

One important detail is worth mentioning: the document contains not a single signature from any military official, or any member of the Guatemalan government. Therefore, how could it be established that this document belongs to the security forces and is an irrefutable evidence

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<sup>579</sup> In 2009 the Secretariat for Peace, a Guatemalan government office established in 1997 after the signing of the peace accords, published the report "La autenticidad del Diario Militar, a la luz de los documentos históricos de la Policía Nacional," which explains the structure of the military logbook.

<sup>580</sup> The note "Apoyo Mutuo" is in reference to the human rights organization *Grupo Apoyo Mutuo* (Mutual Support Group), which was founded in June 1984 by wives of the disappeared.

<sup>581</sup> Kate Doyle, "Death Squad Diary," *Harper's Magazine* 298, no. 1789 (June 1999): 50-53.

of a policy of systematic repression by the government? Access to other documents from other archives, and the importance of context, a term so regularly used as essential for archival principles, was a key element in this process.

On the date of the press release of the publication of the *Diario Militar* the National Security Archive also published a set of eight declassified U.S. documents related to the information in the military logbook from its Guatemala collection.<sup>582</sup> In general, the documents present a picture, viewed from the perspective of U.S. State Department and C.I.A. officials, of the political and human rights situation in Guatemala, with particular emphasis on the years of General Oscar Humberto Mejía Víctores, President of Guatemala during the years recorded in the *Diario Militar*.<sup>583</sup> A report from the CIA, dated 29 October, 1983 describes the political situation during the first months of Mejía Víctores' government, indicating that there was a significant increase of murders, most of them pointing to be by elements from the right.<sup>584</sup> Almost three years later, on 28 March 1986, the State Department's Office of Central American Affairs wrote an assessment of the human rights situation in Guatemala during the period 1977-1986. Regarding Col. Mejía Víctores, the report points to an increase of kidnappings in 1984.<sup>585</sup>

Two of the documents published by the National Security Archive have information about victims whose names are in the *Diario Militar*. In a cable from the U.S. Embassy in Guatemala, dated 2 February 1984, U.S. Ambassador Fredric Chapin describes two kidnappings committed by security forces as examples of government's human rights abuses and warns that the U.S. government "must come to some resolution in policy terms." "Either we can overlook

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<sup>582</sup> "Relevant Declassified U.S. Documents from the National Security Archive's Guatemala Collection," <http://www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB15/index.html> (Accessed September 7, 2011)

<sup>584</sup> United States. Central Intelligence Agency, "Guatemala: Political Violence," Top secret intelligence report, October 29, 1983.

<sup>585</sup> United States. Department of State. Bureau of Inter-American Affairs. Office of Central American Affairs, "Guatemala's Disappeared, 1977-86," Secret report, March 28, 1986.

the records and emphasize the strategic concept, or we can pursue a higher moral path," Ambassador Chapin suggests.<sup>586</sup> In one of the kidnappings, security forces abducted Sergio Vinicio Samayoa Morales from Roosevelt hospital. Earlier that day, 31 January 1984, two individuals attacked Samayoa Morales at his work. The cable then describes the following,

Two hour later, a group of armed men entered the hospital's emergency ward, disarmed the two policemen on duty and questioned the duty physician about the whereabouts of the gunshot victim. After he was located in the prep room for surgery, he was taken out to the waiting vehicles, on a stretcher along with the bottle of intravenous fluid which was still dripping into his arm.<sup>587</sup>

The *Diario Militar* describes the abduction of Samayoa Morales. It says that on 31 January 1984 Samayoa Morales was shot after having been identified. "Because of a head wound he was taken to Roosevelt Hospital and we coordinated his retrieval with the *D.I.* [Intelligence Division]," reads the document.<sup>588</sup>

Another cable from the embassy in Guatemala, dated 30 October 1984, describes the assassination of economics professor Carlos Eugenio de León Gudiel.<sup>589</sup> He was shot while driving home from San Carlos University. According to the cable, the administration of Col. Mejía Vítores denounced the murder and attributed it to common criminals. However, the cable states that, "Circumstantial evidence suggests that at least the Leon murder have been the work of government security forces," since he was member of the *Partido Guatemalteco de los Trabajadores* and had been kidnapped in the past.<sup>590</sup> Carlos de Leon Gudiel is one of the victims listed in the *Diario Militar*. Along with a picture of him, the military log records that he was

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<sup>586</sup> Frederic Chapin to United States Department of State, "Recent Kidnappings: Signs Point to Government Security Forces," Confidential cable, February 2, 1984.

<sup>587</sup> Chapin to United States Department of State, 2.

<sup>588</sup> "[*Diario Militar*]," [p. 58]. <http://www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB15/dossier-color.pdf>. Translated by Joel A. Blanco-Rivera.

<sup>589</sup> Alberto M. Piedra to United States Information Agency, "Weekend Violence Claims Peace Corps Volunteer, University Professors and Assembly Member," Secret cable, October 30, 1984.

<sup>590</sup> Piedra to United States Information Agency, 5.

captured on 15 November 1983 and was released on 4 January 1984. Below this information there is a hand-written note: "26 - 10 - 84 = 300."<sup>591</sup> Professor de León Gudiel was assassinated on 26 October 1984.

Another case from the *Diario Militar* in which information has been found in declassified documents is that of Álvaro René Sosa Ramos. The *Diario Militar* notes that he was captured 11 March 1984. A hand-written note indicates that he escaped two days later, taking refuge at the Belgian Embassy, and fled to Canada on 21 March.<sup>592</sup> A confidential cable from the U.S. Embassy in Guatemala, dated 14 March 1984, recounts this incident, explaining that Sosa Ramos was able to escape from a car and ran to the Belgian embassy asking for help.<sup>593</sup> Individuals that were pursuing him wounded him. After the shooting, he was sent to a private hospital and protected by the Embassy. The incident involving Sosa Ramos is briefly mentioned in a confidential cable from 19 March regarding the kidnappings of union activists. On 24 June 1985, Álvaro René Sosa Ramos filed a complaint at the IAHRC against the government of Guatemala for kidnapping, torture and murder attempt.<sup>594</sup>

The discovery of the archives of the Guatemalan National Police six years later provided additional records to investigate the contents of the military logbook. According to Gustavo Meoño, director of the archive, archivists have been able to identify information from more than half of the cases recorded in the *Diario Militar*, including that of Edgar Fernando García.<sup>595</sup>

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<sup>591</sup> "[Diario Militar]," [p. 68].

<sup>592</sup> "[Diario Militar]," [p. 49].

<sup>593</sup> Paul D. Taylor to U.S. Department of States, "Shooting Incident at Belgian Ambassador's Residence," Confidential cable, March 14, 1984.

<sup>594</sup> *La Autenticidad del Diario Militar, A la Luz de los Documentos Históricos de la Policía Nacional*, 60.

<sup>595</sup> Gustavo Meoño, Skype interview by author, September 6, 2011. The report "La Autenticidad del Diario Militar" indicates that from the discovery of the archive in 2005 to January 6, 2009, information about 57 victims were identified at the archives.

### 5.5.2 The Archives of the Guatemalan National Police

The history of violence and repression over the last hundred years has been characterized by the very detailed, systematic and voluminous creation of records. Control of citizens requires control of information. Surveillance and repression requires control of information. Nazi Germany incorporated mechanized classification systems to identify Jews.<sup>596</sup> Former East Germany required the controlling security apparatus known as the Stasi (and aptly named the Ministry of Information) for which millions of documents were discovered soon after the fall of the Berlin Wall.<sup>597</sup> As recently as March 2011, and following the revolution in Egypt that ousted strongman Mubarak, protesters seized the headquarters of the Security services and saved millions of pages documenting the dictator's repressive system.<sup>598</sup> In Latin America, Operation Condor came to light after the discovery in December 1992 of 600,000 documents at a police station in Paraguay.

Guatemala joined the list of countries where archives of repression were discovered. On 5 July 2005 the Human Rights Ombudsman office responded to complaints about explosives housed at a police storehouse in Guatemala City, just to find piles of documents full of rodents, water, humidity and every possible thing that might be a nightmare for a preservation archivist. What laid there was the historical archive of the Guatemalan National Police, with documents dating back to 1882<sup>599</sup> and up to 1996, when it was disbanded as part of the peace accords.<sup>600</sup>

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<sup>596</sup> Edwin Black, *IBM and the Holocaust: The Strategic Alliance between Nazi Germany and America's Most Powerful Corporation* (New York: Crown Publishers, 2001).

<sup>597</sup> John O. Koehler, *Stasi: The Untold Story of the East German Secret Police* (Boulder, Colo.: Westview Press, 1999).

<sup>598</sup> Kate Doyle, "Egyptians Seize Secret Police Files," *UNREDACTED: The National Security Archive, Unedited and uncensored* (blog), March 10, 2011, <http://nsarchive.wordpress.com/2011/03/10/egyptians-seize-secret-police-files/> (Accessed November 3, 2011).

<sup>599</sup> The earliest document found at the archive so far is dated October 22, 1882. Archivo Histórico de la Policía Nacional, *Del Silencio a la Memoria: Revelaciones del Archivo Histórico de la Policía Nacional* (Guatemala: Archivo Histórico de la Policía Nacional, 2011): 49

Six years later, the *Archivo Histórico de la Policía Nacional*, AHPN (Historical Archive of the National Police) has made significant strides. The terrible conditions in which the documents were found have been addressed and they have been given at least the most basic preservation treatments.<sup>601</sup> By September 2011, thirteen million documents from the period of 1975 to 1985 have been organized and described following the international descriptive standard ISAD(G), and they have been digitized.<sup>602</sup> This significant work has been possible, first, because of the commitment of a group of people who, even without the archival preparation, got involved to assure the preservation of this historic documentation. A number of these individuals had a special connection to these archives, since they were part of the political struggle against repression during the conflict and others had relatives who disappeared.<sup>603</sup> Second, the AHPN counts on the assistance of an international network of archivists, directors of memory centers and historians among others. The group, called the International Advisory Board, includes archivist Antonio González Quintana from Spain and Kate Doyle as representative of the National Security Archive.<sup>604</sup>

It was through the National Security Archive, which has been involved soon after the archive's discovery,<sup>605</sup> that the AHPN obtained assistance from Trudy Huskamp Peterson.<sup>606</sup> Peterson was initially asked by Kate Doyle to write an assessment of the archive, and then

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<sup>600</sup> "Acuerdo sobre el Fortalecimiento del Poder Civil y Función del Ejército en una Sociedad Democrática," Ciudad de México, 19 de septiembre de 1996, <http://www.sepaz.gob.gt/acuerdo-fortalecimiento-poder-civil-funcion-ejercito> (Accessed November 4, 2011). As part of the accord, a new Civil National Police was created.

<sup>601</sup> Gustavo Meoño, Skype interview by author, September 6, 2011.

<sup>602</sup> Meoño, Skype interview by author.

<sup>603</sup> Doyle, "The Atrocity Files: Deciphering the Archives of Guatemala's Dirty War."

<sup>604</sup> For more information on the Advisory Board, including the complete list of its members, see the website of the AHPN, <http://archivohistoricopn.org/pages/consejos-consultivos/consejo-consultivo-internacional.php> (November 4, 2011).

<sup>605</sup> Kate Doyle, "The Guatemalan Police Archives," National Security Archive Electronic Briefing Book No. 170, November 21, 2005, <http://www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB170/index.htm> (Accessed November 4, 2011).

<sup>606</sup> Gustavo Meoño, Skype interview by author, September 6, 2011.



members of the archive asked her for more assistance, particularly regarding training of the staff, which she did in 2006.<sup>607</sup> This is what Doyle wrote in her essay published in *Harper's Magazine* about Peterson's work,

Watching Trudy study the documents was like seeing someone decipher ancient runes. Over time, Trudy has slowly uncovered the secret language of the bureaucracy, and now she teaches the staff how to interpret internal file numbers, what ink stamps belong to which departments, and the reasons behind differently colored copies. With the bureaucratic codes, and investigator can tug at the thread of a human-rights crime and follow it to its source - the unit of the police that committed it, the names of the individual officers involved.<sup>608</sup>

Investigators did identify the human rights crimes, and as discussed in the sections below, were able to successfully prosecute perpetrators in the Guatemalan courts.

"We had to start up with a working group in which none, beginning with me... had the more minimum notion of archival science," recalls Gustavo Meoño, director of the AHPN. "It was really more about will, commitment, conviction," he explains.<sup>609</sup> The training offered by Trudy Peterson helped establish a core of local archivists, many of them young, who were committed to the most rigorous work possible to preserve the archives and make them available to the public. This cohort of archivists and their preparation, Mr. Meoño explains, "is fundamental because it constitute the main defense of this archive in a country where perpetrators of human rights violations still have significant power."<sup>610</sup>

The estimated 80 million documents at the archive traces the flow of information of a security apparatus that was more focused in tracking down political opponents, guerrilla members and anybody considered an enemy of the state. This information is contained in internal police files of employees, which includes informants, personnel records and computer

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<sup>607</sup> Doyle, "The Atrocity Files: Deciphering the Archives of Guatemala's Dirty War," 58.

<sup>608</sup> Doyle, "The Atrocity Files: Deciphering the Archives of Guatemala's Dirty War," 59.

<sup>609</sup> Meoño, Skype interview by author.

<sup>610</sup> Meoño, Skype interview by author.

floppy disks among other types of documents.<sup>611</sup> Because of the work done in the early stages, the principles of provenance and original order were respected. This didn't just help identify the structure of the national police, but more important, it protected the records' chain of custody, and therefore guaranteed that the records can be introduced as evidence in judicial investigations.<sup>612</sup> A quantitative study performed by Benetech's Human Rights Data Analysis Group estimated that 31,734,152 documents were created during the period of 1960-1996.<sup>613</sup> More than six million of the documents in the referred period explicitly mention what the National Police called "events of interest" (i.e. homicide, kidnapping). Almost four million documents mentioned "detention" as an event of interest.<sup>614</sup> The statistical analysis also shows the line of communication between the National Police and the military. It also shows that the National Police was significantly more active in the urban areas of the country.<sup>615</sup>

By March 2011, archivists have been able to identify fifty-five fonds, each one from a particular division of the National Police.<sup>616</sup> This includes one fond for each of the 21 departmental headquarters (*Jefaturas Departamentales*), the seven Corps of the National Police (*Cuerpos de la Policía Nacional*), and other offices of the police structure.<sup>617</sup> The latter included

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<sup>611</sup> Doyle, "The Atrocity Files: Deciphering the Archives of Guatemala's Dirty War," 56–58.

<sup>612</sup> Doyle, "The Atrocity Files: Deciphering the Archives of Guatemala's Dirty War," 59-60.

<sup>613</sup> "El Archivo en Cifras: Algunos Resultados de la Investigación Cuantitativa en el Archivo Histórico de la Policía Nacional de Guatemala," [Benetech], Marzo de 2011, <http://archivohistoricopn.org/media/informes/El%20Archivo%20en%20cifras%20color07042011.pdf> (Accessed November 4, 2011). For a description of the methodology implemented for this analysis see Daniel Guzmán, "Speaking Stats to Justice: Expert Testimony in a Guatemalan Human Rights Trial Based on Statistical Sampling," *CHANCE*, 24, no. 3 [n.d.], <http://chance.amstat.org/current-issue/>

<sup>614</sup> "El Archivo en Cifras," [7].

<sup>615</sup> "El Archivo en Cifras," [7].

<sup>616</sup> Archivo Histórico de la Policía Nacional, *Del Silencio a la Memoria: Revelaciones del Archivo Histórico de la Policía Nacional* (Guatemala: Archivo Histórico de la Policía Nacional, 2011), 32.

<sup>617</sup> Sergio Fernando Morales Alvarado, *El Derecho a Saber: Informe Especial del Archivo Histórico de la Policía Nacional* (Guatemala: Procurador de los Derechos Humanos, 2009), xi.

the Center of Joint Operations, responsible of coordinating security operations, including collaboration with the military.<sup>618</sup>

The National Security Archive has been involved with the AHPN in a different number of areas. In addition to helping with contacting Dr. Peterson and being part of the International Advisory Board, the NSA has assisted with the qualitative analysis of the archives, thus collaborating with the elaboration of reports.<sup>619</sup> In October 2005, Carlos Osorio and members of the "Memory Commission" from Argentina visited the archive and discussed issues related to the long-term control and custody of the archives.<sup>620</sup> Osorio also provided some technical assistance.<sup>621</sup> Jesse Franzblau, who worked as a research assistant at the National Security Archive and spent time at the police archives, explains the NSA's assistance:

It was like kind of three components in terms of support. There's kind of the technology support, there's the archival kind of support in terms of organizing them in a way and fashion that can really be used... and then the third was kind of this visibility... providing capacity to the local groups working with the project but also helping ensure that the documents are going to be accessible and that they are managed in a way that is really useful for human rights advocates and specially for victims looking for information and really promoting the central component, which is the right to know...<sup>622</sup>

The analysis of the documents has also meant the involvement of the NSA in criminal investigations, particularly Kate Doyle, who has provided expert testimony in a number of investigations about Guatemala, two of which are explained below.

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<sup>618</sup> *La Policía Nacional y sus Estructuras* (Guatemala: Archivo Histórico de la Policía Nacional, 2010), 256-62.

<sup>619</sup> Gustavo Meoño, Skype interview by author, September 6, 2011. For a list of reports published by the AHPN see <http://archivohistoricopn.org/pages/investigacion.php> (Accessed October 6, 2011)

<sup>620</sup> Doyle, "The Guatemalan Police Archives."

<sup>621</sup> Jesse Franzblau, interview by author, Ann Arbor, MI, April 18, 2011.

<sup>622</sup> Jesse Franzblau, interview by author, Ann Arbor, MI, April 18, 2011.

### 5.5.3 The *Diario Militar* case at the IACH

Following the publication of the *Diario Militar*, the government of Guatemala promised that the events recorded in the logbook were going to be investigated and those responsible would be brought to justice. Even though the *Ministerio Público* (Attorney General's office) began some investigations,<sup>623</sup> no concrete actions were taken. "And it was painful," Doyle explains,

because I was getting phone calls and letters and emails from relatives of these people, saying "this is extraordinary, this is very painful, this is so awful to see, but at the same time it gives us hope... we are going to tell the investigation... whatever they want because we want this to go ahead"... and of course then six months pass, and a year passes... and then two years, and then four years, and nothing.<sup>624</sup>

Because of this, a group of relatives of 28 victims listed in the *Diario Militar*, with the help from the Myrna Mack Foundation, decided to bring their case to the Inter-American Commission on Human Rights (IACHR).<sup>625</sup> On 15 November 2005 they filed a complaint at the IACHR stating that the Guatemalan government failed to fully investigate and prosecute those responsible for the human rights abuses recorded in the *Diario Militar*.<sup>626</sup> According to the petitioners, the government of Guatemala violated nine articles from the American Convention on Human Rights,<sup>627</sup> including the right to life and right to a fair trial. The IACHR ruled that the

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<sup>623</sup> Kate Doyle was interviewed by the *Ministerio Público* during one of her trips to Guatemala. Interview with Kate Doyle...

<sup>624</sup> Kate Doyle, interview by author, New York City, August 1, 2011.

<sup>625</sup> The IACHR is an organ of the Organization of American States (OAS) and along with the Inter-American Court of Human Rights are the two bodies that deal with Human Rights Issues. See <http://www.cidh.oas.org/what.htm> (Accessed September 9, 2011)

<sup>626</sup> Gudiel Álvarez et al. v. La República de Guatemala, N.A. (Comisión Interamericana de Derechos Humanos, 15 de noviembre de 2005), 7.

<sup>627</sup> The American Convention on Human Rights, also known as the Pact of San José, was signed on 22 November 1969 by members of the OAS, including Guatemala. The document is available in English at <http://www.cidh.oas.org/Basicos/English/Basic3.American%20Convention.htm> (Accessed September 9, 2011)

complaint was admissible and opened case number 12.590 on 14 December 2006.<sup>628</sup> Subsequently, the IACHR hosted two meetings between the plaintiffs and representatives of the Government of Guatemala, and held two public hearings. Both hearings focused significantly on the authenticity of the *Diario Militar*. Kate Doyle was brought to provide expert testimony.

The 2005 complaint presents an historical context to the policies of systematic detention, torture and extrajudicial executions that were sanctioned by the security forces of the Government of Guatemala. It supported this explanation with the findings of the Guatemalan truth commission, the REMHI report and the report by Kate Doyle regarding the authenticity of the *Diario Militar*, among other sources. The military log provides irrefutable evidence about this systematic violence:

It is a document of the military intelligence from 1983 and constitutes more evidence that in Guatemala there was, from the highest levels of the State's structure, an elaborated strategy of force disappearances in the urban zones between 1983 and 1985, against a specific sector of Guatemalan society pointed as "internal enemy."<sup>629</sup>

The complaint also underscores that many of the relatives of the victims made inquiries to the government about the whereabouts of their loved ones, days after they disappeared. Furthermore, some even met with the President of Guatemala at the time, General Oscar Humberto Mejía Víctores.<sup>630</sup> All inquiries were unsuccessful. It is also worth mentioning that while the archives of the Guatemalan National Police were discovered in July 2005, when the complaint was filed it was still not clear what these archives might have about the victims in the *Diario Militar*.<sup>631</sup>

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<sup>628</sup> José Miguel Álvarez y otros ("Diario Militar") v. Guatemala, Caso no. 12.590, Admisibilidad y Fondo (Comisión Interamericana de Derechos Humanos, 2 de Octubre de 2010), 9. Document available at <http://www.cidh.org/demandas/12.590Esp.pdf> (Accessed November 5, 2011).

<sup>629</sup> Gudiel Álvarez et al. v. La República de Guatemala, 14. Translated by Joel A. Blanco-Rivera.

<sup>630</sup> Gudiel Álvarez et al. v. La República de Guatemala, 19.

<sup>631</sup> Kate Doyle, interview by author, August 1, 2011; Roxanna Altholz, phone interview by author, September 19, 2011.

During the process, the plaintiffs focused on three main areas. First, they established that it has been proven that the military logbook is an authentic document from the Guatemalan military. Not only the National Security Archive was able to authenticate the document, but also in June 1999 the Office of Guatemala's Human Rights Ombudsman authenticated it through the Guatemalan Embassy in Washington.<sup>632</sup> The information in the document, the plaintiffs argue, was also confirmed as facts through an analysis that included the study of reports on human rights abuses written in the 1980s, the REMHI report and declassified U.S. government documents.<sup>633</sup> Second, the plaintiffs presented evidence to show that the Guatemalan government was not forthcoming in the investigations of the abuses documented in the *Diario Militar*. These investigations, the plaintiffs argued, did not have a clear strategy and were made in a very deficient way.<sup>634</sup> For example, relatives of the victims have been interviewed multiple times but the investigators did not follow up on the information given to them. In the original complaint, the plaintiffs list each of the victims they are representing and explain in detail what happened to them and the unsuccessful efforts by their relatives to find them.<sup>635</sup> Finally, the plaintiffs denounced that the government did not recognize the victims' relatives' right to truth, particularly because of the lack of policies on access to information.<sup>636</sup> The discoveries of the *Diario Militar* and the archives of the National Police proved that such documentation did exist and that the government was not willing to make it public.<sup>637</sup>

In its response to the legal complaint, the Government of Guatemala recognized the plaintiffs' right to present the case before the IACHR. It reaffirmed that the government

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<sup>632</sup> José Miguel Álvarez y otros ("Diario Militar") v. Guatemala, 21-22.

<sup>633</sup> José Miguel Álvarez y otros ("Diario Militar") v. Guatemala, 16.

<sup>634</sup> José Miguel Álvarez y otros ("Diario Militar") v. Guatemala, 17.

<sup>635</sup> Gudiel Álvarez et al. v. La República de Guatemala, 31-74.

<sup>636</sup> Gudiel Álvarez et al. v. La República de Guatemala, 19.

<sup>637</sup> Gudiel Álvarez et al. v. La República de Guatemala, 19.

recognized the authenticity of the *Diario Militar*, and stated that it would continue investigating the crimes reported in the document. Regarding access to information, representatives of the government indicated that the freedom of information legislation enacted on 23 September 2008 includes an article that establishes that government documents with information regarding human rights abuses will not be kept secret under any circumstances.<sup>638</sup> They finally proposed the possibility of reaching an amicable agreement with the plaintiffs.

While representatives of the government of Guatemala were accepting the veracity of the *Diario Militar*, it was still important to include in the case a very strong analysis of its authenticity. According to Roxanna Altholz, legal representative for the petitioners, when the complaint was filed there were still agencies from the Guatemalan government that questioned the document's authenticity.<sup>639</sup>

The first public hearing for the case took place on 12 October 2007 in Washington DC. The hearing was requested by the Myrna Mack Foundation to present the testimony of two witnesses and expert testimony by Kate Doyle from the National Security Archive. In her opening remarks, Roxanna Altholz stated that they were going to present about the lack of justice in Guatemala and the authenticity of the *Diario Militar*. She explained,

In this case impunity is not inevitable. Commissioners, you will understand the importance as evidence of the document known as the *Diario Militar*. The *Diario Militar* is proof of the authorship of the crimes, written by the authors of the crimes themselves. The existence of this document is what distinguishes this case from the thousands of human rights violations committed during the armed conflict in Guatemala.<sup>640</sup>

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<sup>638</sup> José Miguel Álvarez y otros ("Diario Militar") v. Guatemala, 21.

<sup>639</sup> Roxanna Altholz, phone interview by author, September 19, 2011.

<sup>640</sup> "Case 12.590, José Miguel Gudiel Álvarez and Others (Diario Militar), Guatemala," Hearing before the Inter-American Commission on Human Rights, Washington D.C., October 12, 2007, [http://www.oas.org/OASpage/videosasf/2007/11/CIDH\\_V.3.wmv](http://www.oas.org/OASpage/videosasf/2007/11/CIDH_V.3.wmv) (Accessed October 2, 2011). Translated by Joel A. Blanco-Rivera.

Kate Doyle's testimony began with questions from a legal representative for the petitioners regarding the declassified documents that are part of the NSA Guatemala Documentation Project. Asked about the relevance of these documents in understanding the Guatemalan security forces, Doyle explained that during the period covered by the *Diario Militar* it was basically impossible to get access to government records in Guatemala. Since the U.S. government was closely gathering intelligence information in Guatemala, the declassified records provided a significant amount of information about the structure of the Guatemalan military and intelligence.<sup>641</sup> Doyle also explained that during the authentication process, the National Security Archive analyzed human rights reports, including those from Amnesty International, Human Rights Watch and the IAHRC, along with the truth commission report and the declassified U.S. documents. The Archive also hired an archivist to study the physical characteristics of the document. This included an analysis of the photographs and the ink stamps.

Doyle was asked if she was able to reach a conclusion regarding who was the creator of the document, to which Doyle answered in the affirmative. Her conclusion was that it was a document created by the *El Archivo*.<sup>642</sup> Asked to explain this conclusion, Doyle added,

I made that conclusion based on a number of different factors. First of all, we actually have declassified U.S. documents that explicitly link the Archivo with cases in the *Diario Militar*... In addition to documents that explicitly link the Archivo to cases, we also looked at what the *Diario* told us as we read the entries...We also looked at patterns of conduct, as expressed by the *Diario Militar*, the use of logistical intelligence resources that could have only been used by the Archivos. We looked at the access to confidential and sensitive information about the individual suspects that only the Archivo could have access to. And finally we saw that in the *Diario* is expressed frequently coordination between the unit responsible for these abductions and many other units within the security services of the Guatemalan and police apparatus.<sup>643</sup>

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<sup>641</sup> "Case 12.590, José Miguel Gudiel Álvarez and Others (Diario Militar), Guatemala."

<sup>642</sup> "Case 12.590, José Miguel Gudiel Álvarez and Others (Diario Militar), Guatemala."

<sup>643</sup> "Case 12.590, José Miguel Gudiel Álvarez and Others (Diario Militar), Guatemala."



As an example, Doyle mentioned the case of Álvaro René Sosa Ramos, explained above, and read from a Department of Defense's document declassified in 1998 which points to the Archivo as responsible for wounding Sosa Ramos during his escape.

The questions from the representatives of the government of Guatemala focused on the physical characteristics of the military logbook. More specifically, they asked about the provenance of the photos and about the ink and stamps in the document. Regarding the latter, Doyle explained that there are multiple inks and that different typewriters were used, but that there are no official stamps in the document.<sup>644</sup> The representatives finally asked if there was any possibility that the military log was written years after the actual events and based on reports from human rights organizations. Kate Doyle indicated it was not possible. "[T]he accumulation of information and, in particular photographs from mid and early 1980s makes it impossible for anyone to have invented this documents after the fact," Doyle explained. "This was something that was created not in one sitting but day-by-day over the course of a long period of time as these individuals were abducted," she concluded."<sup>645</sup>

As explained above, at the time of the initial complaint it was uncertain what kind of information could be found in the archives of the national police regarding the victims of the *Diario Militar*. Since the work at the archive prioritized the organization of records from the most violent period of the conflict, 1975 - 1985,<sup>646</sup> archivists from the national police archives were able to identify hundreds of such documents. By 2008, the total reached more than five hundred. The second public hearing, on 22 October 2008, was about these documents, with Kate Doyle presenting her preliminary analysis of the materials.

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<sup>644</sup> "Case 12.590, José Miguel Gudiel Álvarez and Others (Diario Militar), Guatemala."

<sup>645</sup> "Case 12.590, José Miguel Gudiel Álvarez and Others (Diario Militar), Guatemala."

<sup>646</sup> Gustavo Meoño, Skype interview with author, September 6, 2011.

In her statement before the Commission, Doyle explained that the documents from the police archives further proved the authenticity of the *Diario Militar*. Furthermore, the evidence confirmed her initial conclusion that the *Diario Militar* is a document from the presidential intelligence service *Archivo*. "Today for the first time," Doyle explained, "I can use documents from the Guatemalan government as evidence of the arguments presented in 2007."<sup>647</sup> The identified documents included summaries of investigations about individuals, called "fichas," police reports, and transcripts of interrogations. She also explained that since the fonds that were identified were kept by the original organization, they were able to find documents that are referenced in the "fichas" and also were able to understand the police's recordkeeping practices.<sup>648</sup> Doyle finished her statement presenting a sample of documents from the police archives which contain information about five of the victims in the *Diario Militar*.

The legal representatives of the petitioners underlined in their statements their argument that the Guatemalan government continuously concealed the information they had about the victims. Roxanna Altholz was particularly persistent,

This case illustrates the intimate relation between the right to truth and the rights to access to information. We are under an extraordinary situation. The existence of official documents places truth within reach of the relatives of the victims. According to the Inter-American jurisprudence any person has the right to solicit information from the public archives and the state has the obligation to provide it. However, three years after the discovery of the police archives, and more than twenty years after the creation of these documents it is still not clear which institution has the mandate to provide access to the documents.<sup>649</sup>

Five years after the initial complaint a decision by the IACHR was still pending, prompting seven NGOs to send a letter to the IACHR's Executive Secretary on 9 August 2010.

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<sup>647</sup> "Case 12.590, José Miguel Gudiel Álvarez and Others (*Diario Militar*), Guatemala," Hearing before the Inter-American Commission on Human Rights, Washington D.C., October 22, 2008, <http://www.cidh.oas.org/Audiencias/133/B4DefensoresDDHHGuatemala.mp3> (Accessed October 10, 2011).

<sup>648</sup> "Case 12.590, José Miguel Gudiel Álvarez and Others (*Diario Militar*), Guatemala."

<sup>649</sup> "Case 12.590, José Miguel Gudiel Álvarez and Others (*Diario Militar*), Guatemala."

The letter argued that it was time for the commission to reach a decision, adding that more documentation was turned over to the commission, including over 500 documents in 2008 from the archives of the National Police. The letter expressed the following,

Dr. Cantón, we believe that now is the time for the Inter-American Commission on Human Rights to issue its findings on the *Diario Militar* case. Guatemala is wrestling with the very issue that lies at the heart of the case: the right of families of the disappeared - and indeed of all Guatemalans - to have uncensored access to government records containing evidence of grave human rights crimes committed during the internal armed conflict. Ever since the victims listed in the *Diario Militar* were disappeared, their relatives have demanded information on their whereabouts. And for almost 25 years the Government of Guatemala claimed that the information did not exist. The appearance in 1999 of the *Diario Militar* - and then in 2005 of millions of pages of police records in the Historical Archives of the National Police - proved that claim to be a lie.<sup>650</sup>

The commission's decision was finally made public on 18 February 2011, sending the case to the Inter-American Court of Human Rights.

The IACHR's letter to the court, explaining the admissibility of the case, states that the government of Guatemala has violated thirteen articles from the American Convention on Human Rights.<sup>651</sup> These violations included failing to respect the right to access to information. On 18 November 2010 the IACHR sent his report with specific recommendations to the government of Guatemala and gave the State two months to respond about its compliance to the recommendations. "[B]ecause of the need of justice for the victims and given the lack of detailed and substantial information regarding the State's compliance to the recommendations," the letter indicates, the case has been sent to the Inter American Court.<sup>652</sup> The IACHR asks the court for ordering the State to comply with six reparation measures. One of the measures listed is to guarantee unrestricted access of all government information that would help the clarification of

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<sup>650</sup> Amanda Martín et al. to Dr. Santiago Cantón, August 9, 2010, <http://www.myynamack.org.gt/index.php/publicaciones/51-varios/194-letter-to-iachr-diario-militar-case-1> (Accessed November 3, 2011)

<sup>651</sup> José Miguel Álvarez y otros ("*Diario Militar*") v. Guatemala, 2-3.

<sup>652</sup> José Miguel Álvarez y otros ("*Diario Militar*") v. Guatemala, 3.

the human rights abuses.<sup>653</sup> With this letter of admissibility, the IACHR became a party to the litigation in the court.<sup>654</sup>

The 144-page report included in the letter to the court, which is the document the Guatemalan government received in November, describes the litigation process beginning with the complaint filed in November 2005, a description of the plaintiffs' position and the response by the government of Guatemala, a comprehensive analysis of the merit of the case and the recommendations. Obviously, this analysis included the Commission's position regarding the authenticity of the *Diario Militar*. The report underlines Kate Doyle's testimony that the authenticity was proven based on an analysis of other documents, including declassified U.S. documents and the IACHR's own reports from the mid 1980s.<sup>655</sup> It also explains that Doyle was also able to analyze documents from the archives of the Guatemalan national police, which along with declassified U.S. documents led her to conclude that the military logbook was created by *El Archivo*. The commission agreed with Doyle's analysis.

The Commission considers as a proven fact that the document known as the *Diario Militar* is an authentic document, elaborated by intelligence services from the Guatemalan military and that it registers repressive actions committed by Guatemalan security forces between August 1983 and March 1985.<sup>656</sup>

In its legal analysis, the Commission explains why the Guatemalan government violated thirteen articles of the American Convention on Human Rights. Regarding the right to access government information (article 13), it was demonstrated that the government failed to provide access to documents during the internal conflict and during the transition. The report emphasizes

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<sup>653</sup> José Miguel Álvarez y otros ("Diario Militar") v. Guatemala, 5. The other measures are: prosecution of the perpetrators, find and identify the disappeared, reparations to the victims, incorporate human rights to the education of police and security forces, and strengthening the judicial system.

<sup>654</sup> Roxanna Altholz, phone interview with author, September 19, 2011.

<sup>655</sup> José Miguel Álvarez y otros ("Diario Militar") v. Guatemala, 34.

<sup>656</sup> José Miguel Álvarez y otros ("Diario Militar") v. Guatemala, 35. Translated by Joel A. Blanco-Rivera.

the importance of access to government information, particularly during the transition period.<sup>657</sup> Regarding the case under consideration, the IACHR states that because of how the *Diario Militar* was uncovered, the Commission had to evaluate Guatemalan government actions regarding access to information.<sup>658</sup> "For the plaintiffs," the report states, "the concealment of the *Diario Militar* exemplifies a pattern of concealment of official documents that prove the participation of State agents in grave human rights violations; under this same pattern falls the concealment of the Historical Archive of the National Police."<sup>659</sup> The Commission agreed with this argument. While the Commission recognizes recent initiatives by the Guatemalan government, like the creation of the freedom of information legislation in 2008 that prohibits the concealment of information about human rights violations, it nevertheless emphasizes that in this particular case, the *Diario Militar* and the police archives were concealed during the armed conflict and during the transition.<sup>660</sup>

At the time of writing this dissertation, there has not been yet a date established for a public hearing at the Inter-American Court of Human Rights. Representatives of the plaintiffs filed their arguments in July 2011 and the Guatemalan government had until October to respond.<sup>661</sup> It is possible that a public hearing before the court will take place in 2012.<sup>662</sup>

Regardless of the future outcome in the Inter-American court, the case of the *Diario Militar* at the IAHRC has proven beyond any doubt that the military logbook is an authentic document created by the presidential intelligence services of the government of Guatemala during the period between 1983 and 1985. Beyond the legal case, the military logbook has

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<sup>657</sup> José Miguel Álvarez y otros ("Diario Militar") v. Guatemala, 135.

<sup>658</sup> José Miguel Álvarez y otros ("Diario Militar") v. Guatemala, 136.

<sup>659</sup> José Miguel Álvarez y otros ("Diario Militar") v. Guatemala, 136. Translated by Joel A. Blanco-Rivera.

<sup>660</sup> José Miguel Álvarez y otros ("Diario Militar") v. Guatemala, 140.

<sup>661</sup> Roxanna Altholz, phone interview with author, September 19, 2011.

<sup>662</sup> Altholz, phone interview with author.

provided some closure to the relatives of the victims, who at least now know the fate of their loved ones. Furthermore, there are continuing efforts to find the remains of the disappeared. On 22 November 2011, the Forensic Anthropology Foundation of Guatemala announced that the remains of two victims named in the *Diario Militar* were found on a former military base.<sup>663</sup>

As for the meaning of this case for the National Security Archive, Kate Doyle reflects:

The *Diario Militar* has become for us, for me, for the archive, a sort of emblematic of the importance of the right to truth. Not in the old human rights sense, which always had to do with the obligation of the state to investigate, which the state never did, I mean, if I can make yet another sweeping generalization, if you look at the reality of the Inter-American Commission ruling, which all say "you have to investigate this case, you have to investigate that case." Well, of course 99% of these cases don't ever get investigated, and nothing happens. But extending the right to truth, to the obligation of the state to produce records, to open the files, means that even if the state does not have the \_\_\_\_\_, or the justice system, or the political will to do a proper investigation and trial for judicial process of some kind, the state can still open files, the state can still make available what records it has, and the state still reconstruct information in the case information is missing or lost. So for me the *Diario Militar* is kind of our flag for that argument.<sup>664</sup>

From a legal perspective, Roxanna Altholz explains that having the *Diario Militar* and the archives of the national police increases the chances of prosecuting intellectual actors of the abuses. "It's very unusual to have these type of documentary evidence in the force disappearances that we have seen in this case, and what that means is there's a unique historic and very real opportunity to prosecute the perpetrators," she explains.<sup>665</sup>

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<sup>663</sup> "Remains of Two of Guatemala's Death Squad Diary Victims Found in Mass Grave," National Security Archive Electronic Briefing Book No. 363, November 22, 2011, <http://www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB363/index.htm> (Accessed December 20, 2011)

<sup>664</sup> Kate Doyle, interview with author, New York City, August 1, 2011.

<sup>665</sup> Roxanna Altholz, phone interview with author, September 19, 2011.

#### 5.5.4 The trial of the disappearance of Edgar Fernando García

On Saturday 18 February 1984, members of the Guatemalan National Police captured Edgar Fernando García, a labor activist and member of the Guatemalan Worker's Party. The report of the Historical Clarification Commission describes that García, 27 years old, was on his way to work when he and Danilo Chinchilla were intercepted by members of the police and were wounded after trying to run away.<sup>666</sup> While Chinchilla was sent to Roosevelt Hospital, García was taken to the police station (*Quinto Cuerpo de la PN*). Later that day, a group of men entered García's house, took some of his belongings and told his mother and wife that García will return Tuesday.<sup>667</sup> He is still disappeared. The CEH concluded that members of the National Police kidnapped and executed Edgar Fernando García.<sup>668</sup> The analysis of the case was mainly based on testimony, with the addition of some U.S. declassified documents. At the time of the CEH report, the *Diario Militar* and the archives of the national police were still unknown.

García appears in the *Diario Militar*. He is one of the twenty individuals mentioned in the third section of the logbook, which has "*Apoyo Mutuo*" written at the top of the page. García's wife, Nineth Montenegro, was one of the founders of the human rights organization *Grupo Apoyo Mutuo*.<sup>669</sup> In addition, documents related to his capture were found within the millions of documents from the archives of the national police, and the National Security Archive was able to identify declassified U.S. documents reporting on his capture. Twenty-five years after his abduction an investigation by the Guatemalan Human Rights Prosecutor led to the

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<sup>666</sup> Comisión para el Esclarecimiento Historico, *Guatemala Memoria del Silencio. Tomo VI*, 146.

<sup>667</sup> Comisión para el Esclarecimiento Historico, *Guatemala Memoria del Silencio. Tomo VI*, 147.

<sup>668</sup> Comisión para el Esclarecimiento Historico, *Guatemala Memoria del Silencio. Tomo VI*, 152.

<sup>669</sup> Comisión para el Esclarecimiento Historico, *Guatemala Memoria del Silencio. Tomo VI*, 149-52.

arrest of two former police officials,<sup>670</sup> who in October 2010 were sentenced to 40 years in prison for the disappearance of Edgar Fernando García. This was the first criminal case caused by the documents found at the archives of the national police. The analysis of these documents was key to the final verdict of the case. In addition to the information included in the *Diario Militar*, a total of 667 documents from the archives of the national police and nineteen U.S. declassified records were incorporated into the documentary evidence.

The *Diario Militar* describes Edgar Fernando García as a primary school teacher born in Guatemala City and a member of the labor union at CAVISA, a glass factory. The last note about him describes his kidnapping in 1984, but notes the date as 18 April, instead of 18 February.<sup>671</sup> The information does not include who the captors were, stating that unknown individuals abducted García and that his whereabouts were unknown.<sup>672</sup> A more complete picture emerges with the declassified records and particularly the archives of the national police.

Following the arrest of the two former police officers, the National Security Archive published eleven declassified documents that provide context about the political situation during and after García's disappearance.<sup>673</sup> The documents describe how labor activists and union lawyers were a particular target by the intelligence and police services in Guatemala. A cable from the U.S. embassy in Guatemala dated 23 February 1984 reports about the kidnapping of a number of trade-union leaders and lawyers.<sup>674</sup> The cable mentions that the Guatemalan press

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<sup>670</sup> Kate Doyle and Jesse Franzblau, "Historical Archives Lead to Arrest of Police Officers in Guatemalan Disappearance," National Security Archive Electronic Briefing Book No. 273, <http://www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB273/index.htm> (Accessed November 5, 2011)

<sup>671</sup> This date disparity was one of the arguments brought in the trials by the lawyers of the two police officers. The judges recognized the disparity, but ruled that because of the evidence found in the archives of the national police and from witnesses testimony, it was proven that García was indeed abducted in February 18 (courtRuling.pdf, 83)

<sup>672</sup> "[Diario Militar]," [p. 8]

<sup>673</sup> Doyle and Jesse, "Historical Archives Lead to Arrest of Police Officers in Guatemalan Disappearance"

<sup>674</sup> Frederic Chapin to U.S. Department of State, "Guatemala: Trade-Union Leaders Abducted," Confidential Cable, U.S. Embassy in Guatemala, February, 1985.



reported about the abduction of Edgar Fernando García. In his comments, Ambassador Chapin points out that the embassy is hopeful Fernando García will be released, since other kidnapped union leaders have been released.<sup>675</sup> "The government is obviously rounding up people connected with the extreme left-wing labor movement for interrogation," Chapin concludes.<sup>676</sup> Another cable from 19 March 1984 describes the public protests by the Guatemalan Confederation of Syndicalist Unity (CUSG) about a number of labor issues, including the increasing number of disappearances of union leaders. The abduction of Edgar Fernando García was one of the cases mentioned by the CUSG.<sup>677</sup> Five of the declassified documents were about the Mutual Support Group, including embassy cables reporting on the assassination of an active member of the organization and the suspicious death of one founder that same week.<sup>678</sup>

Regarding the archives of the national police, provenance and original order were important factors that helped the identification of documents related to the events described in the *Diario Militar*. In this case, one administrative document at the archive led to the identification of other related documentation.<sup>679</sup> The document is a memorandum by the chief of police with recommendations for awards to police officers. One of the recommendations is to award four police officers for capturing two "subversives" who allegedly attacked them.<sup>680</sup> While

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<sup>675</sup> Chapin, "Guatemala: Trade-Union Leaders Abducted," 5.

<sup>676</sup> Chapin, "Guatemala: Trade-Union Leaders Abducted," 5.

<sup>677</sup> Paul D. Taylor to U.S. Department of State, "Guatemala: Democratic Trade Union Confederation CUSG Protests Abductions of Trade-Union Leaders," Confidential cable, U.S. Embassy in Guatemala, March 19, 1984.

<sup>678</sup> Alberto M. Piedra to U.S. Department of State, "Murder of Member of Mutual Support Group (GAM)," Cable, U.S. Embassy in Guatemala, April 1, 1985; Alberto M. Piedra to U.S. Department of State, "Background and Recent Developments of the Mutual Support Group (GAM)," Cable, U.S. Embassy in Guatemala, April 4, 1985; Piedra to U.S. Department of State, "Death of Maria Rosario Godoy de Cuevas, a Director of the "Mutual Support Group" (GAM)," Cable, U.S. Embassy in Guatemala, April 6, 1985; Piedra to U.S. Department of State, "Mutual Support Group (GAM) Update," Cable, U.S. Embassy in Guatemala, April 9, 1985.

<sup>679</sup> Gustavo Meoño, Skype interview by author, September 6, 2011.

<sup>680</sup> Guatemala. Policía Nacional. Cuarto Cuerpo, "Nomina del Personal del Cuarto Cuerpo de la Policía Nacional que se Hace Acreedora a Distinciones, Según el Reglamento de Condecoraciones," Archivo Histórico de la Policía Nacional. A digitized copy of the document is available at <http://www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB337/Document2.pdf>

the names of the two individuals is not mentioned in the document, it states that the incident happened on 18 February 1984 at zone 11, the same date and area where the abduction of García is reported in the *Diario Militar*. Two of the four police officials recommended for an award were the defendants in the trial. "From that point," recalls Gustavo Meoño, "a series of related documents were identified which allowed the public ministry, who are responsible for the criminal investigation, to show how there was a complete planning, how there were operatives, how there were follow ups to this event."<sup>681</sup> These documents have provided context, but also, as Meoño explains, "allowed the identification of the perpetrators, allowed the identification with precision of the chain of command, and today they have been indicted."<sup>682</sup>

At the trial against the two former police officials, witnesses were included to provide expert testimony about the documents. Velia Elisa Muralles Bautista, investigator with the police archives, presented expert testimony about 661 documents from the archives. Daniel Guzman, from Benetech, provided a statistical analysis of the documents at the police archives related to García's kidnapping. Kate Doyle testified about the U.S. declassified documents.<sup>683</sup>

Doyle's testimony focused on nineteen declassified documents provided to the criminal investigation, which the National Security Archive obtained as part of the Guatemala Declassification Project.<sup>684</sup> Doyle presented the documents that mention García's abduction (as described above) and explained what the documents tell about the climate of political repression

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<sup>681</sup> Gustavo Meoño, Skype interview by author, September 6, 2011. Translated by Joel A. Blanco-Rivera.

<sup>682</sup> Meoño, Skype interview by author.

<sup>683</sup> Kate Doyle, "'I Wanted Him Back Alive.'" An Account of Edgar Fernando García's Case from Inside "Tribunals Tower," *Unredacted: The National Security Archive, Unedited and Uncensored* (blog), October 26, 2010, <http://nsarchive.wordpress.com/2010/10/26/i-wanted-him-back-alive-/-an-account-of-edgar-fernando-garcias-case-from-inside-tribunals-tower/> (Accessed January 5, 2012)

<sup>684</sup> Sentencia del Tribunal Octavo de Sentencia Penal, Narcoactividad y Delitos contra el Ambiente, October 28, 2010, 9. The ruling is available online at <http://www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB337/Document1.pdf> (Accessed January 5, 2012)

at the time.<sup>685</sup> The documents show the view of U.S. officials that security forces kidnapped labor union activists because it considered them part of the leftist insurgency.<sup>686</sup> Therefore, the value of these documents was to paint a picture of the political situation and relate it to García's abduction.<sup>687</sup>

The documents found at the archives of the national police were perhaps the most important evidence for the case. The prosecutor for the Guatemalan Human Rights office said in an interview that these documents were decisive factors to the investigation.<sup>688</sup> Like the U.S. declassified documents, the documents showed the political situation at the time of García's kidnapping. But a number of these records specifically name the defendants and show how the collaboration between police and military implemented operatives to capture "subversives." Furthermore, these are not records written by foreign officials from an embassy, these are actual records from the authors of the repressive offensive against the opposition. At the trial, Velia Elisa Muralles Bautista provided her expert testimony about these documents.

Muralles Bautista explained that the documents from the police archives show that there was plan called *Operación Limpieza* (Cleansing Operation), with consisted of systematic vigilance, intervention and capture of alleged subversives. The documents also show that the two defendants were part of the Fourth Corp ("Cuarto Cuerpo") of the national police, which had the task to implement Cleansing Operation in the zone where García was abducted. Training for this

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<sup>685</sup> Sentencia del Tribunal Octavo de Sentencia Penal, 9-14. Also see "Desaparición de Sindicalista García es Llevada a Juicio," *Prensa Libre* (Guatemala), October 18, 2010, [http://www.prensalibre.com/noticias/justicia/juicio\\_desaparicion\\_sindicalista\\_Garcia\\_0\\_355764509.html](http://www.prensalibre.com/noticias/justicia/juicio_desaparicion_sindicalista_Garcia_0_355764509.html) (Accessed January 5, 2012).

<sup>686</sup> Sentencia del Tribunal Octavo de Sentencia Penal, 12.

<sup>687</sup> Doyle, "'I Wanted Him Back Alive.'"

<sup>688</sup> Carolina Gamazo, "Documentos Sirven de Prueba en Juicios," *Prensa Libre* (Guatemala), July 19, 2010, [http://www.prensalibre.com/noticias/Documentos-sirven-prueba-juicios\\_0\\_301169892.html](http://www.prensalibre.com/noticias/Documentos-sirven-prueba-juicios_0_301169892.html) (Accessed January 5, 2012).

plan took place at the national level between 30 January and 8 February 1984.<sup>689</sup> A memorandum by the chief of the Center of Joint Operations to the lieutenant of the Fourth Corp, dated 10 February 1984, informs that a phase of the operation will be taking place in zones 7, 11 and 12 of Guatemala City.<sup>690</sup> Seven days later, February 17, another memorandum informs about an additional intervention in the same zones, which will take place on Saturday February 18 between 9:00 am and noon,<sup>691</sup> the date and place where García was captured.

The court decision lays out the merits for finding the defendants guilty of the forced disappearance of Edgar Fernando García. It first states that the testimonies from witnesses and experts prove that García was illegally detained on 18 February 1984.<sup>692</sup> The documents also showed that the detention was committed by elements of the Guatemalan military and the national police,<sup>693</sup> and more specifically, they show the involvement of the defendant in García's disappearance. The documents from the archives of the national police demonstrate that García was under surveillance since 1978. "There is no doubt that he was the subject of surveillance because he was considered by the State as an enemy," reads the ruling.<sup>694</sup> The decision underlines the suffering of García's relatives for more than twenty five years and the importance of truth.

... the victim has the right to truth, the nation has the right to know the truth about the acts or unjust and painful events provoked by State violence, this right is a collective and inalienable judicial good.<sup>695</sup>

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<sup>689</sup> Sentencia del Tribunal Octavo de Sentencia Penal, 21.

<sup>690</sup> Centro de Operaciones Conjuntas. Director General. Policía Nacional Guatemala, "Oficio COC-165-WA," February 10, 1984, Archivo Historico de la Policía Nacional. Available online at <http://www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB337/Document3.pdf>.

<sup>691</sup> Centro de Operaciones Conjuntas. Director General. Policía Nacional Guatemala, "Oficio No. COC/207-laov," February 17, 1984, Archivo Historico de la Policía Nacional. Available online at <http://www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB337/Document6.pdf>.

<sup>692</sup> Sentencia del Tribunal Octavo de Sentencia Penal, 76.

<sup>693</sup> Sentencia del Tribunal Octavo de Sentencia Penal, 77-78.

<sup>694</sup> Sentencia del Tribunal Octavo de Sentencia Penal, 82. Translated by Joel A. Blanco-Rivera.

<sup>695</sup> Sentencia del Tribunal Octavo de Sentencia Penal, 89. Translated by Joel A. Blanco-Rivera.

## 5.6 SUMMARY

Gudmund Valderhaug, on his essay about the role of archives in the identification of Norway's "war children,"<sup>696</sup> examines the relation between the archivist and the idea of justice. In the late 1980s and mid 1990s, amid a resurgence of discussions about post-war Norway, war children began to visit the National Archives, searching for their adoption files.<sup>697</sup> In 2003 the Norwegian parliament approved a reparations program for war children and other victims. The reparation would depend on the documentation victims could present as evidence of their suffering.<sup>698</sup>

Regarding the role of the archivist, Valderhaug states the following:

The archivist's role in the documentation of personal rights is to be an archivist. It is not our job to pretend to be lawyers or social workers... We cannot grant people justice. But we can use our knowledge to locate whatever documentation there is to be found, so that the individuals may have their cases tried at the proper authorities. Our role, then, is to supply documentation and put this into the societal and administrative context.

In Guatemala, the application of archival principles and ideas regarding authenticity, context and provenance became powerful tools for the social actors seeking justice and accountability for human rights abuses committed by the State during the civil war. This included the National Security Archive's collaboration with the Historical Clarification Commission, in which they analyzed declassified records, created a database with information about military units and officials, and provided them to the commission. It also included the international collaboration with archivists in Guatemala to safeguard, organize and preserve the archives of the national police. Finally, the legal cases discussed in this chapter show that the main contribution of the archival records used as part of the documentary evidence was to

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<sup>696</sup> The Norwegian war children were children in Norway whose father was a German occupying soldier. Norway was occupied by the Nazi regime from 1940-1945.

<sup>697</sup> Gudmund Valderhaug, "Memory, Justice and the Public Record," *Archival Science* 11, no. 1-2 (March 2011): 18.

<sup>698</sup> Valderhaug, "Memory, Justice and the Public Record," 18.

provide context to the conflict. This, in turn, placed the assassination of Myrna Mack and the disappearance of Edgar Fernando García as part of a planned counterinsurgency strategy, rather than as isolated criminal events.

The research about the work of the National Security Archive in Guatemala also shows the relations between archives, politics and activism. These relations were also affected by particular contexts and events. In the United States, the National Security Archive and other organizations were able to capitalize from an administration that showed a level of openness to release records documenting the Guatemalan conflict. Documents were also released as a consequence of the cases of Michael DeVine and Jennifer Harbury. The NSA also obtained records through thousands of FOIA requests. In Guatemala, the release of the *Diario Militar*, the files of Operation Sofia, and the discovery of the archives of the national police were significant events that confronted the State's denials about human rights violations. In sum, the opening of archives and the recognition of the right to truth have defied the silences that have tried to bury the past. The records created by the powerful are now the stronger evidence against them.

On 26 January 2012 the country, and the world, became witnesses of a historical and unprecedented event. Former President Efraín Ríos Montt entered a Guatemalan court, facing charges of genocide and crimes against humanity. Later that day, Judge Carol Patricia Flores Blanco ruled that Ríos Montt should stand trial for the charges. The former general was placed under house arrest.<sup>699</sup> The evidence presented by the prosecution included the files of Operation

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<sup>699</sup> Hugo Alvarado, "José Efraín Ríos Montt Queda Ligado a Proceso por Genocidio," *Prensa Libre*, January 27, 2012, [http://www.prensalibre.com/noticias/Rios-Montt-queda-ligado-proceso\\_0\\_635336490.html](http://www.prensalibre.com/noticias/Rios-Montt-queda-ligado-proceso_0_635336490.html). Also see Rory Carroll, "Efraín Ríos Montt: Guatemala Human Rights Groups Welcome Genocide Trial," *The Guardian*, January 27, 2012, <http://www.guardian.co.uk/world/2012/jan/27/efrain-rios-montt-genocide-trial?newsfeed=true> (Accessed January 31, 2012).

Sofía and *Victoria* 82, and film footage of his speeches.<sup>700</sup> During the hearing, Ríos Montt stated that he was aware of the allegations and asked for the opportunity to “discuss the other side of the coin.”<sup>701</sup> Yet, when Judge Flores Blanco gave him the opportunity to respond to the prosecutor’s presentation, the former general said: “*Prefiero guardar silencio*” (I prefer to remain silent).<sup>702</sup> The *Diario Militar*, the files of Operation Sofía, the archives of the Guatemalan National Police, and the U.S. declassified records are speaking loudly.

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<sup>700</sup> Jerson Ramos, “Videos e Informes Castrenses, la Base para Acusar a Efraín Ríos Montt,” *El Periódico*, January 26, 2012, [http://www.elperiodico.com.gt/es/20120126/pais/207043/?utm\\_source=feedburner&utm\\_medium=email&utm\\_campaign=Feed%3A+elperiodicogt+%28elPeriódico%29](http://www.elperiodico.com.gt/es/20120126/pais/207043/?utm_source=feedburner&utm_medium=email&utm_campaign=Feed%3A+elperiodicogt+%28elPeriódico%29) (Accessed January 31, 2012)

<sup>701</sup> “Guatemala’s Former Dictator on Trial for Genocide – Video,” *The Guardian*, January 27, 2012, <http://www.guardian.co.uk/world/video/2012/jan/27/guatemala-dictator-trial-genocide-video?INTCMP=ILCNETTXT3487> (Accessed January 31, 2012).

<sup>702</sup> Elisabeth Malkin, “Accused of Atrocities, Guatemala’s Ex-Dictator Chooses Silence,” *The New York Times*, January 26, 2012, [http://www.nytimes.com/2012/01/27/world/americas/efrain-rios-montt-accused-of-atrocities-in-guatemala.html?\\_r=1](http://www.nytimes.com/2012/01/27/world/americas/efrain-rios-montt-accused-of-atrocities-in-guatemala.html?_r=1) (Accessed January 31, 2012). A video clip of this moment is also available through the Guatemalan newspaper *Prensa Libre*. See Alvarado, “José Efraín Ríos Montt Queda Ligado a Proceso por Genocidio.

## **6.0 CONCLUSION**

This concluding chapter moves beyond summarizing the main findings of the dissertation. More importantly, it discusses three main topics that I identified during my dissertation research. The first topic is archives and activism. The work of the National Security Archive in Latin America shows the role of archives as active institutions of memories. Furthermore, in the context of human rights, it shows the power of archives and how they impact accountability mechanisms. Second, this study of the National Security Archive in Latin America has shown the impact of the conjunction of archives from different countries and how it strengthens the evidence of past human rights violations. Finally, one of the most important values of the transitions in Latin America has been importance of the right to know, of the responsibility for the state to open their archives and confront the past.

These three topics will be addressed separately in this chapter. I will then conclude with a reflection of further research in the topic of archives and transitional justice.

### **6.1 ARCHIVES, ACTIVISM AND THE POWER OF ARCHIVES**

As shown in Chapter 5, FOIA was not the only factor that impacted the declassification of U.S. government documents. An important element was a public campaign requesting President Clinton to release the documents. Other examples of an active role by the NSA are discussed



throughout the dissertation, including the Archive's collaboration with the Center for Justice and Accountability in the case against the intellectual authors of the murders of the Jesuit priests, their housekeeper and her daughter, and the archive's assistance to the Peruvian truth commission and the Townsend Commission. These examples put into perspective the dynamic nature of archives as institutions of social memory and as agents for accountability that is mostly addressed by what can be labeled as "post-modern archival thinking," and discussed in the literature review.

The main value of this literature is that it has placed archives as part of complex processes that shape and re-shape how history is debated, how memories are constructed, and how, in the context of human rights, archives are not immune of the political and social struggles. To the contrary, archives become part of these struggles. Nevertheless, the value of archival principles and practices that have shaped the archival profession since the late 19<sup>th</sup> century cannot be overlook.

In 1986 David A. Bearman and Richard H. Lytle published the essay "The Power of the Principle of Provenance." Bearman and Lytle argued that one of the archivist's main contribution to information was the profession's "unique perspective provided by the principle of provenance as it concerns organizational activity, especially how organizations create, use, and discard information."<sup>703</sup> The power of the principle of provenance and its applicability by the archivists are also powerful tools in the implementation of accountability mechanisms. The organization of the archives of the Guatemalan National Police and the use of its records for human rights investigations exemplify this power. Despite finding the millions of documents piled in cabinets and bags, archivists have been able to identify and reconstruct the police's structure, the chain of

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<sup>703</sup> David A. Bearman and Richard G. Lytle, "The Power of the Principle of Provenance," *Archivaria* 21 (Winter 1985-86): 14.

command, and its recordkeeping practices. This representation has been a critical element in the understanding of the history of violence during Latin America's years of authoritarianism, and to provide a strong context of this period to truth commission investigations and human rights trials.

The role of the NSA in the nine legal cases studied in this dissertation shows the value of the archivist's understanding of provenance, custody and the history of records and recordkeeping. The testimonies of Kate Doyle and Carlos Osorio in various trials, along with the records provided by the NSA to prosecutors and human rights groups, served principally as evidence of a bigger picture, to prove that human rights abuses were part of systematic and well planned counterinsurgency strategies implemented by the State. Therefore, they showed that the assassination of Zelmar Michelini and Hector Gutierrez in Argentina was part of Operation Condor. They showed that the disappearance of Edgar Fernando García in Guatemala took place during a period where the government was targeting individuals and particularly student and labor leaders. They showed that the government of Alberto Fujimori implemented a "two-face" counterinsurgency operation during the conflict with Shining Path, one that which included secret detentions and extrajudicial executions.

There is an additional important value taken from the dissertation, and particularly from the study of Guatemala. The active collaboration of Guatemalan and international organizations and individuals to the preservation of the archives of the national police has in turn created a group of committed Guatemalan archivists who gained important knowledge on core principles and practices of archival studies. A quote from the archive's director Gustavo Meoño from Chapter 5 is worth repeating. Meoño stated that the education of these archivists "is fundamental because it constitute the main defense of this archive in a country where perpetrators of human

rights violations still have significant power.”<sup>704</sup> Furthermore, archivists working at the AHPN include young individuals who were children during the latter years of the conflict. Their work at the archive also serves as a medium to understand the history of Guatemala and to pass these memories to future generations. Jesse Franzblau, who as a research assistant for the NSA spent time at the police archives doing research for the *Diario Militar* case, explains, “the capacity building at that level is probably one of the most inspiring aspects of it, in terms of seeing kids in their 20s that are so fascinated in this piece of history and they can take part of it and it’s really enshrining.”<sup>705</sup>

The network of human rights groups in Latin America and the NSA's collaboration with them has also impacted the role of the National Security Archive. As explained in Chapter 4, the Archive's request and study of U.S. government documents about Latin America during the Cold War connected the organization to the human rights issue. In the words of Kate Doyle:

I got involved in bringing documents as an expert into these trials because of the network of amazing human rights organizations that worked on these trials and with which we worked... I think the reason it works, the way this role of the archive has evolved is because it has come organically out of our collaborative work with human rights organizations over the many many years, I will even say decades on bringing them documents that will be useful to them in specific, I don’t want to say cases because I’m not talking about trials, but just, their own cases of disappeared people, or cases of massacres or trying identify a particular military officer, what do we know about him. We’d work with our partners in Latin America, all over the region in that way, kind of through contacts, though our very intimate engagement with human rights groups and certain protagonists that were very involved nationally and who have a relationship with us... So we are active in that we are part of, we help designed this role for ourselves, but very much in response to a kind of urgent need and a call from our partners to engage in that way. So the networks of NGOs that we work in are absolutely fundamental to how our role has evolved in Latin America and what kind of work we do in these judicial processes today.<sup>706</sup>

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<sup>704</sup> Gustavo Meoño, Skype interview by author, September 6, 2011.

<sup>705</sup> Jesse Franzblau, interview with author, April 18, 2011, Ann Arbor, MI.

<sup>706</sup> Kate Doyle, interview with author, August 1st, 2011.

This collaboration has also helped archivists from Latin America to become expert witnesses at human rights trials and other investigations. The trial of the disappearance of Edgar Fernando Garcia discussed in Chapter 5 exemplifies this, with the testimony of Velia Elisa Muralles Bautista on behalf of the Guatemalan National Police Archives.

## 6.2 THE CONVERGENCE OF ARCHIVES

One of the most powerful elements found through this dissertation research has been the study of how archives from different countries converge into human rights investigations to establish strong documentary evidence. This happened with the cases in Guatemala and the Southern Cone. Regarding the former, the information from the Historical Archives of the National Police, the *Diario Militar* and the U.S. declassified documents was put together to provide strong and irrefutable evidence about the State's human rights violations. The entry of Edgar Fernando Garcia in the *Diario Militar* was corroborated with U.S. embassy cables that mention his abduction. In addition, a document from the police archives pointed to the police officers that captured García, and led to hundreds of additional documents that were showed at the trial against two former police officers. In the Southern Cone, the Archive of Terror impacted the arrest of Augusto Pinochet in Spain, and trials in Argentina, Paraguay and Chile.<sup>707</sup> Carlos Osorio's testimony in the trial of *Automotores Orletti* was based on his research of U.S. government records and at the Archive of Terror.

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<sup>707</sup> See "Rendition in the Southern Cone: Operation Condor Documents Revealed from Paraguayan 'Archive of Terror'," National Security Archive Electronic Briefing Book No. 239 – Part II, December 21, 2007, <http://www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB239d/index.htm> (Accessed January 15, 2012)

The opening of archives in Latin America and the United States have also brought closure to members of a sector that were indirect victims of repression: the children of the disappeared. In Argentina, the regime let pregnant political prisoners give birth and then gave the children for adoption to families sympathetic to the military regime.<sup>708</sup> After giving birth, the mothers were "disappeared."<sup>709</sup> The number of children of the disappeared has been estimated around 500.<sup>710</sup> Sons and daughters of the disappeared did not learn about their biological parents years after having been raised by people who they believed were their real parents. The Grandmothers of Plaza de Mayo has led the efforts to identify the children of the disappeared. As of 2011, the organization has been able to identify and reunite with their biological family 92 individuals.<sup>711</sup>

On August 2009 the Oral Federal Tribunal of Rosario, Argentina began a trial against Pascual Guierri, Daniel Amelong, Jorge Fariña, Eduardo Constanzo and Walter Dionisio Pagano. They were members of the Intelligence unit 121 of Rosario and accused for human rights violations against 28 victims.<sup>712</sup> On 15 April 2012 they were found guilty and sentenced to

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<sup>708</sup> The organization Grandmothers of Plaza de Mayo actively worked toward this cause, along with the organization H.I.J.O.S.. See Rita Arditti, *Searching for Life: The Grandmothers of the Plaza de Mayo and the Disappeared Children of Argentina* (Berkeley: University of California Press, 1999).

<sup>709</sup> The military regimes in Latin America implemented the practice of enforced disappearance. In other words, the military abducted individuals and refused to acknowledge the person's fate or whereabouts. In Argentina, this practice included drugging the prisoners and dumping them into the sea from an airplane. For a first-hand account of this practice from a former military officer see Horacio Verbitsky, *The Flight: Confessions of an Argentine Dirty Warrior* (New York: New Press, 1996).

<sup>710</sup> Ari Grandsman, "“Do You Know Who You Are?” Radical Existential Doubt and Scientific Certainty in the Search for the Kidnapped Children of the Disappeared in Argentina,” *Journal of the Society of Psychological Anthropology* 37, no. 4 (2009): 441.

<sup>711</sup> This data was obtained from the organization's publication *Niños Desaparecidos, Jóvenes Localizados 1975-2011*, available online at <http://www.abuelas.org.ar/Libro2010> (Accessed January 15, 2012).

<sup>712</sup> “Comenzó el Primer Juicio Oral en Rosario por Violaciones a los Derechos Humanos,” *Centro de Información Judicial: Agencia de Noticias del Poder Judicial* (Argentina), August 8, 2009, <http://www.cij.gov.ar/nota-2180-Comenzo-el-primer-juicio-oral-en-Rosario-por-violaciones-a-los-derechos-humanos.html> (Accessed January 15, 2012).

life in prison.<sup>713</sup> The victims include 14 prisoners who were murdered in Argentina to cover up a failed secret plan called “Operation Mexico.” As part of the plan, members of the Argentine intelligence traveled to Mexico City in 1978 to track down and assassinate the leadership of the Argentine insurgent movement *Montoneros*. Prisoners were forced to travel with the unit to identify the leaders, but the plan failed when one of the detainees, Tulio “Tucho” Valenzuela, escaped in Mexico City and publicly denounced the plan.<sup>714</sup> The Mexican authorities expelled the intelligence officers out of the country.

In Argentina, the 14 prisoners were murdered for their knowledge of Operation Mexico, but another prisoner with knowledge of the plan was not assassinated. Jaime Dri, a former Argentine congressman, was captured in December 1977 in Uruguay and sent to an Argentine detention center. In 1978 he escaped from the Argentine infamous detention center at the Navy School of Mechanics (ESMA). Miguel Bonasso’s book *Recuerdo de la Muerte* is based on Dri’s testimony and knowledge of Operation Mexico. Jaime Dri was also a key witness at the trial in Rosario.

One of the 14 victims was Raquel Negro, partner of Tulio Valenzuela and who was pregnant with twins. Both were kidnapped in Mar del Plata on 2 January 1978 along with Raquel’s previous child, Sebastián.<sup>715</sup> Raquel Negro gave birth to a girl and a boy and then was disappeared. Her daughter, Sabrina Valenzuela Negro, was left at a convent and given for

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<sup>713</sup> “DDHH: Difundieron Fundamentos del Fallo que Condenó a Prisión Perpetua a Cinco ex Militares,” *Centro de Información Judicial: Agencia de Noticias del Poder Judicial* (Argentina), June 14, 2010, <http://www.cij.gov.ar/nota-4286-DDHH--difundieron-fundamentos-del-fallo-que-condeno-a-prision-perpetua-a-cinco-ex-militares.html> (Accessed January 15, 2012).

<sup>714</sup> For an account of the failed plan see Miguel Bonasso, *Recuerdo de la Muerte* (Buenos Aires: Planeta, 1994).

<sup>715</sup> “Sentencia del Tribunal Oral Federal de Rosario Nro. 1, No. 03/2010,” Rosario, Argentina, June 14, 2010, 122. The court order was obtained through the website of the Argentine Judiciary: “DDHH: Difundieron Fundamentos del Fallo que Condenó a Prisión Perpetua a Cinco ex Militares,” *Centro de Información Judicial: Agencia de Noticias del Poder Judicial* (Argentina), June 14, 2010, <http://www.cij.gov.ar/nota-4286-DDHH--difundieron-fundamentos-del-fallo-que-condeno-a-prision-perpetua-a-cinco-ex-militares.html> (Accessed January 15, 2012).

adoption. In 2008, a DNA test confirmed that she was the daughter of Tulio Valenzuela and Raquel Negro.<sup>716</sup> Sabrina and Sebastián testified at the trial in Rosario.<sup>717</sup>

Carlos Osorio also testified at the trial, presenting documents that corroborated Jaime Dri's testimony. On 8 December 2009 the National Security Archive published fifteen of these documents.<sup>718</sup> It consists of eleven U.S. declassified records, three documents from the Archive of Terror and one document from Mexico's Federal Security Directorate. Osorio also presented additional documents from Mexico describing the detention of two members of the Argentine intelligence in Mexico City.<sup>719</sup>

The records from Mexico were obtained thanks to the freedom of information law signed by President Vicente Fox on 10 June 2002. The National Security Archive also created "The Mexico Project," directed by Kate Doyle and which began in 1994. The project requested U.S. government records about Mexico through FOIA, researched the National Archives, Presidential Libraries, and Mexican archives.<sup>720</sup> The project expanded after the approval of the Mexican FOI law. This legislation opened archives about Mexico's period under the Institutional Revolutionary Party.

Carlos Osorio's testimony at the trial became also an opportunity to meet Sabrina and Sebastián. On 17 December 2009 he published a moving account of his experience. His

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<sup>716</sup> Her case is included in the Grandmothers of Plaza de Mayo online publication *Niños Desaparecidos, Jóvenes Localizados 1975-211*, [http://www.abuelas.org.ar/Libro2010/index\\_restituidos.php](http://www.abuelas.org.ar/Libro2010/index_restituidos.php) (Accessed January 15, 2012).

<sup>717</sup> A summary of their testimonies is included in the court decisional document, see "Sentencia del Tribunal Oral Federal de Rosario Nro. 1," 123-124.

<sup>718</sup> "Operation Mexico: Secret Argentine Rendition Program Illuminated by Declassified Documents," National Security Archive Electronic Briefing Book No. 300, December 8, 2009, <http://www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB300/index2.htm> (Accessed January 15, 2012).

<sup>719</sup> "Sentencia del Tribunal Oral Federal de Rosario Nro. 1," 169-170. These documents were also published by the National Security Archive. See Carlos Osorio and Jesse Franzblau, eds., "1978: Operación Clandestina de la Inteligencia Militar Argentina en México, National Security Archive Electronic Briefing Book No. 241, <http://www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB241/index.htm> (Accessed January 15, 2012).

<sup>720</sup> "The Mexico Project," National Security Archive, <http://www.gwu.edu/~nsarchiv/mexico/> (Accessed January 15, 2012). Also see "The Mexico Freedom of Information Program," National Security Archive, <http://www.gwu.edu/~nsarchiv/mexico/transparency.htm> (Accessed January 15, 2012).

description of the reason for his testimony underscores the convergence of archives from different countries:

The Judges in the trial had requested my testimony in the case because in 2007 the National Security Archive discovered and published a series of records – including mug shots, interrogation transcripts and an expulsion order for the Argentine intelligence agents – in the archived files of the Mexican Federal Security Directorate (Dirección Federal de Seguridad—DFS) in Mexico City. Thousands of miles away, in Paraguay’s infamous “Archive of Terror,” Archive researchers also found secret Argentine documents shared by Argentine security forces with the Paraguayan secret police that confirmed Operation Mexico.<sup>721</sup>

Osorio also highlights that identification of the documents were made thanks to collaborative efforts with people in Mexico, Washington, Paraguay, Panama and Argentina. Osorio met with Sebastián, Sabrina and their uncle at a hotel lobby, where he showed them 21 documents, many of which mention Tulio Valenzuela, while Raquel is also mentioned in some. Upon looking at the documents, Osorio recalls, Sabrina expressed, “It is as though the documents enable us to touch them.”<sup>722</sup>

### 6.3 OPENING THE FILES IN LATIN AMERICA

The Mexican freedom of information law is one example of the increasing number of Latin American countries that have enacted transparency and access to information legislation after the transitions from repressive regimes.<sup>723</sup> The following table presents the countries in Latin

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<sup>721</sup> Carlos Osorio, “Children of the Disappeared: “The Documents Enable Us to Touch Them...”,” *Unredacted: The National Security Archive, Unedited and Uncensored* (blog), December 17, 2009, <http://nsarchive.wordpress.com/2009/12/17/the-documents-enable-us-to-touch-them.../> (Accessed January 15, 2012).

<sup>722</sup> Cited in Osorio, “Children of the Disappeared.”

<sup>723</sup> While Mexico was not ruled by a military dictatorship, the Institutional Revolutionary Party controlled the government for almost 70 years, until the election of Vicente Fox in 2000, from the National Action Party. The PRI’s control included political persecution against the opposition. One of the most tragic events occurred on 2



America that have enacted freedom of information laws since the year 2000.<sup>724</sup> All the countries discussed in this dissertation (Guatemala, El Salvador, Argentina, Uruguay, Paraguay and Peru) have approved legislation towards the right to know. While this does not necessarily transpire into a successful implementation, just like it has happened in the United States, it is nevertheless a significant step towards recognizing the people's right to know.

The National Security Archive has been asked to assist with the preparation of freedom of information laws in Latin America. This has been the case, for example, in Mexico, Chile and El Salvador, with the Archive working closely with the first two.<sup>725</sup> In Mexico, the efforts toward a freedom of information law were led by a coalition of members of civil society called the *Grupo Oaxaca* (Oaxaca Group).<sup>726</sup> On 24 May 2001, the *Grupo Oaxaca* released a statement proposing the approval of a freedom of information legislation and outlining its main

**Table 2.** Freedom of Information laws in Latin America since the year 2000

Year	Country	Year	Country
2000		2005	Bolivia
2001		2006	Honduras
2002	Jamaica	2007	Nicaragua
	Mexico	2008	Chile
	Panama		Guatemala
	Paraguay		Uruguay
	Peru	2009	
2003	Argentina	2010	
2004	Dominican Republic	2011	Brazil
	Ecuador		El Salvador

October 1968 when the Mexican Army killed hundreds of students demonstrating against the government in Tlatelolco. See Kate Doyle, "The Tlatelolco Massacre: U.S. Documents on Mexico and the Events of 1968," National Security Archive, <http://www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB99/> (Accessed January 15, 2012).

<sup>724</sup> The data was obtained from the website <http://www.right2info.org/>, which compiles information about laws and regulations about access to information around the world, and from the website <http://www.freedominfo.org/> (Mentioned in Chapter 1).

<sup>725</sup> Kate Doyle, interview with author, August 1st, 2011.

<sup>726</sup> "Mexico Freedom of Information Overview," <http://www.freedominfo.org/regions/latin-america/mexico/mexico2/> (Accessed January 16, 2012). Also see Kate Doyle, "Freedom of Information in Mexico," May 2, 2002, <http://www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB68/index3.html> (Accessed January 16, 2012).

principles.<sup>727</sup> The coalition contacted the National Security Archive and asked for advice and support. Since Kate Doyle was living in Mexico City at the time, she became very involved in the process.<sup>728</sup> The NSA helped by bringing experts from Washington to work with the initial wording of the FOI law.<sup>729</sup> After the passage of the law, Doyle continued collaborating with the *Grupo Oaxaca*, particularly traveling through the country to publicize the law and exhort the states to enact their own transparency laws.<sup>730</sup>

The recognition through the preservation of discovered archives, the courts and freedom of information laws about the right to truth and the responsibility of the state to open their archives is one of the most significant victories from these networks of human rights and pro-transparency groups, and from the victims of repression and their relatives. The *Diario Militar* case at the Inter-American Commission on Human Rights is a key decision that reinforces the right to know and the important role of archives to achieve judicial and historical accountability. The opening and preservation of these archives, therefore, will be a constant reminder of a tragic past, but also recognition to the continuing efforts towards accountability and memory.

## 6.4 FURTHER RESEARCH

There are two areas that emerge as particular interest for future research. The first topic is the emergence of freedom of information laws in Latin America during the past ten years and how they impact government accountability, democracy, and human rights in the region. The second

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<sup>727</sup> Grupo Oaxaca, "Declaración de Oaxaca," *Sala de Prensa* 2, No. 35 (September 2001), <http://www.saladeprensa.org/art262.htm> (Accessed January 16, 2012).

<sup>728</sup> Kate Doyle, interview with author, August 1st, 2011.

<sup>729</sup> Kate Doyle, interview with author, August 1st, 2011.

<sup>730</sup> Kate Doyle, interview with author, August 1st, 2011.

topic is the development of comparative studies to study the relation between archives, transitional justice and human rights.

#### **6.4.1 Freedom of information in Latin America**

A historical study about the development of freedom of information laws in Latin America offers the opportunity to further study the place of archives and records in societies that aim to develop a more democratic system. A number of questions can be explored by this study. What are the factors that influenced the approval of freedom of information laws? Were these laws a direct result of the transitions from authoritarian regimes and internal conflicts? What role did civil society and archivists played in the advocacy for freedom of information laws?

A more specific approach could be to select two countries and do an in-depth study about the history of their FOI laws. This comparative study can therefore shed light into the freedom of information movements in Latin America and the roles played by archives and archivists. It would be an opportunity to also explore how archival traditions in these countries are impacted by the principles and application of freedom of information laws.<sup>731</sup>

This study can also help examine other social actors that have worked with the National Security Archive as part of the human rights and freedom of information networks of civil society. What other archives have been involved? How do these social actors view archives and their societal role? In Chapter 1 I mention that in other countries organizations similar to the

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<sup>731</sup> Historically, archival practices in Latin America have had a hierarchical element, where users of archives are mostly historians and certain sectors of society. See Héctor J. Maymí-Sugrañez, “Latin American Archival Theory and Practice during the 1970s and 1980s,” *Libraries Culture* 34, no. 3 (Summer 1999). This tradition has been changing, with a more open access to archives.

National Security Archive have been established. One example is *Archivos Chile*. Are there other similar organizations? How do their work compare with that of the National Security Archive?

#### **6.4.2 Comparative studies**

In the literature review (Chapter 2) I comment about the need to develop a stronger research agenda to analyze the role of archives in the context of human rights. I point particularly to the development of the field of transitional justice and how recent scholarship proposes different methodologies for a comparative analysis of its mechanisms and the societies that implement them. I also describe the University of Wisconsin's Transitional Justice Data Base Project. A similar approach can be applied to archives. Archival studies on the relation between archives and human rights, like the scholarship on transitional justice, have relied mostly on single case studies. It has been an important contribution, since each case provides its unique perspective. Yet, how can archival scholars move to a more comparative approach? Furthermore, can archivists interested in human rights build a structured and wide-ranging data set that can provide information to evaluate, in a comparative basis, what and how archives are used in mechanisms of accountability for past human rights abuses?

A very valuable research topic is a comparative study of archives of truth commissions in Latin America. How archivists manage issues of privacy, preservation and access? How do these experiences compare? Furthermore, what impact have these archives had on human rights trials, memorialization initiatives and the efforts to develop a stronger democratic society?

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